THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Legal Compilation

Statutes and Legislative History
Executive Orders
Regulations
Guidelines and Reports

JANUARY 1973

WILLIAM D. RUCKELSHAUS
Administrator

U.S. Environmental Protection Agency
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FOREWORD

It has been said that America is like a gigantic boiler in that once the fire is lighted, there are no limits to the power it can generate. Environmentally, the fire has been lit!

With a mandate from the President and an aroused public concerning the environment, we are experiencing a new American Revolution, a revolution in our way of life. The era which began with the industrial revolution is over and things will never be quite the same again. We are moving slowly, perhaps even grudgingly at times, but inexorably into an age when social, spiritual and aesthetic values will be prized more than production and consumption. We have reached a point where we must balance civilization and nature through our technology.

The U.S. Environmental Protection Agency, formed by Reorganization Plan No. 3 of 1970, was a major commitment to this new ethic. It exists and acts in the public's name to ensure that due regard is given to the environmental consequences of actions by public and private institutions.

In a large measure, this is a regulatory role, one that encompasses basic, applied, and effects research; setting and enforcing standards; monitoring; and making delicate risks–benefit decisions aimed at creating the kind of world the public desires.

The Agency was not created to harass industry or to act as a shield behind which man could wreak havoc on nature. The greatest disservice the Environmental Protection Agency could do to American industry is to be a poor regulator. The environment would suffer, public trust would diminish, and instead of free enterprise, environmental anarchy would result.

It was once sufficient that the regulatory process produce wise and well-founded courses of action. The public, largely indifferent to regulatory activities, accepted agency actions as being for the "public convenience and necessity." Credibility gaps and cynicism make it essential not only that today's decisions be wise and well-founded but that the public know this to be true. Certitude, not faith, is de rigueur.

In order to participate intelligently in regulatory proceedings, the citizen should have access to the information available to the agency. EPA's policy is to make the fullest possible disclosure of information, without unjustifiable expense or delay, to any interested party. With

this in mind, the EPA Compilation of Legal Authority was produced not only for internal operations of EPA, but as a service to the public, as we strive together to lead the way, through the law, to preserving the earth as a place both habitable by and hospitable to man.

WILLIAM D. RUCKELSHAUS
Administrator
U.S. Environmental Protection Agency

PREFACE

Reorganization Plan No. 3 of 1970 transferred 15 governmental units with their functions and legal authority to create the U.S. Environmental Protection Agency. Since only the major laws were cited in the Plan, the Administrator, William D. Ruckelshaus, requested that a compilation of EPA legal authority be researched and published.

The publication has the primary function of providing a working document for the Agency itself. Secondarily, it will serve as a research tool for the public.

A permanent office in the Office of Legislation has been established to keep the publication updated by supplements.

It is the hope of EPA that this set will assist in the awesome task of developing a better environment.

LANE WARD GENTRY, J.D.
Assistant Director for Field Operations
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ACKNOWLEDGMENT

The idea of producing a compilation of the legal authority of EPA was conceived and commissioned by William D. Ruckelshaus, Administrator of EPA. The production of this compilation involved the cooperation and effort of numerous sources, both within and outside the Agency. The departmental libraries at Justice and Interior were used extensively; therefore we express our appreciation to Marvin P. Hogan, Librarian, Department of Justice; Arley E. Long, Land & Natural Resources Division Librarian, Department of Justice; Frederic E. Murray, Assistant Director, Library Services, Department of the Interior.

For exceptional assistance and cooperation, my gratitude to: Gary Baise, formerly Assistant to the Administrator, currently Director, Office of Legislation, who first began with me on this project; A. James Barnes, Assistant to the Administrator; K. Kirke Harper, Jr., Special Assistant for Executive Communications; John Dezzutti, Administrative Assistant, Office of Executive Communications; Roland O. Sorensen, Chief, Printing Management Branch, and Jacqueline Gouge and Thomas Green, Printing Management Staff; Ruth Simpkins, Janis Collier, Wm. Lee Rawls, Peter J. McKenna, James G. Chandler, Jeffrey D. Light, Randy Mott, Thomas H. Rawls, John D. Whittaker, Linda L. Payne, John M. Himmelberg, and Dana W. Smith, a beautiful staff who gave unlimited effort; and to many others behind the scenes who rendered varied assistance.

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INSTRUCTIONS

The goal of this text is to create a useful compilation of the legal authority under which the U.S. Environmental Protection Agency operates. These documents are for the general use of personnel of the EPA in assisting them in attaining the purposes set out by the President in creating the Agency. This work is not intended and should not be used for legal citations or any use other than as reference of a general nature. The author disclaims all responsibility for liabilities growing out of the use of these materials contrary to their intended purpose. Moreover, it should be noted that portions of the Congressional Record from the 92nd Congress were extracted from the "unofficial" daily version and are subject to subsequent modification.

EPA Legal Compilation consists of the Statutes with their legislative history, Executive Orders, Regulations, Guidelines and Reports. To facilitate the usefulness of this composite, the Legal Compilation is divided into the eight following chapters:

A. General
B. Air
C. Water
D. Solid Waste
E. Pesticides
F. Radiation
G. Noise
H. International

AIR

The chapter labeled "Air," and color coded light blue, contains the legal authority of the Agency directly related to air pollution. Several documents under this title are applicable to other areas of pollution, and when this occurs, a reference is made back to "General" where the full text appears. This method is used in order that the documents are not needlessly reproduced in each chapter.

SUBCHAPTERS

Statutes and Legislative History

For convenience, the Statutes are listed throughout the Compilation by a one-point system, i.e., 1.1, 1.2, 1.3, etc., and Legislative History begins wherever a letter follows the one-point system. Thusly, any 1.1a, 1.1b, 1.2a, etc., denotes the public laws comprising the 1.1,

1.2 statute. Each public law is followed by its legislative history. The legislative history in each case consists of the House Report, Senate Report, Conference Report (where applicable), the Congressional Record beginning with the time the bill was reported from committee.

Example:

1.1 Clean Air Act, as amended, 42 U.S.C. §1857 *et seq.* (1970).
1.1a Air Pollution Act of July 14, 1955, P.L. 84–159, 69 Stat. 322.
(1) Senate Committee on Public Works, S. REP. No. 389, 84th Cong., 1st Sess. (1955).
(2) House Committee on Interstate and Foreign Commerce, H.R. REP. No. 968, 84th Cong., 1st Sess. (1955).
(3) Congressional Record, Vol. 101 (1955):
(a) May 31: Amended and passed Senate, pp. 7248–7250;
(b) July 5: Amended and passed House, pp. 9923–9925;
(c) July 6: Senate concurs in House amendment, pp. 9984–9985.

This example not only demonstrates the pattern followed for legislative history, but indicates the procedure where only one section of a public law appears. You will note that the Congressional Record cited pages are only those pages dealing with the discussion and/or action taken pertinent to the section of law applicable to EPA. In the event there is no discussion of the pertinent section, only action or passage, then the asterisk (*) is used to so indicate, and no text is reprinted in the Compilation. In regard to the situation where only one section of a public law is applicable, then only the parts of the report dealing with same are printed in the Compilation.

Secondary Statutes

Many statutes make reference to other laws and rather than have this manual serve only for major statutes, these secondary statutes have been included where practical. These secondary statutes are indicated in the table of contents to each chapter by a bracketed cite to the particular section of the major act which made the reference.

Citations

The United States Code, being the official citation, is used throughout the Statute section of the compilation.

TABLE OF STATUTORY SOURCE

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1.2	Public Contracts, Advertisements for Proposals for Purchases and Contracts for Supplies or Services for Government Departments; Application to Government Sales and Contracts to Sell and to Government Corporations, as amended, 41 U.S.C. §5 (1958).	Referred to in the Clean Air Act at §1857b–1(a)(2)(D).
1.3	Advances of Public Moneys, Prohibition Against, as revised, 31 U.S.C. §529 (1946).	Referred to in the Clean Air Act at §1857b–1(a)(2)(D).
1.4	Contracts: Acquisition, Construction or Furnishing of Test Facilities and Equipment, as amended, 10 U.S.C. §2353 (1956).	Referred to in the Clean Air Act at §1857b–(a)(2)(D).
1.5	Record on Review and Enforcement of Agency Orders, as amended, 28 U.S.C. §2112 (1966).	Referred to in the Clean Air Act at §§1857c–5(f)(2)(B), 1857f–5(b)(2)(B)(ii).
1.6	Disclosure of Confidential Information Generally, as amended, 18 U.S.C. §1905	Referred to in the Clean Air Act at §§1857c–9(c), 1857d(j)(1), 1857f–6(b), 1857h–5(a)(1).
1.7	Per Diem, Travel and Transportation Expenses; Experts and Consultants; Individuals Serving Without Pay, as amended, 5 U.S.C. §5703 (1969).	Referred to in the Clean Air Act at §§1857d(i), 1857e(e), 1857f–6e(b)(2).
1.8	Highway Safety Act of 1966, as amended, 23 U.S.C. §402 (1970).	Referred to in the Clean Air Act at §1857f–6b(2).
1.9	Federal Salary Act, as amended, 5 U.S.C. §§5305, 5332 (1970).	Referred to in the Clean Air Act at §1857f–6e(b)(3)(A).
1.10	The Federal Aviation Act of 1958, as amended, 49 U.S.C. §1301 *et seq.* (1970).	Referred to in the Clean Air Act at §§1857f–10(a), (b), 1857f–12.
1.11	Department of Transportation Act, as amended, 49 U.S.C. §1651 *et seq.* (1968).	Referred to in the Clean Air Act at §1857f–10(b).
1.12	The National Environmental Policy Act of 1969, 42 U.S.C. §4332(2)(c) (1970).	Referred to in the Clean Air Act at §1857h–7(a).
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1.14	The Davis-Bacon Act, as amended, 40 U.S.C. §§276a–276a–5 (1964).	Referred to in the Clean Air Act at §1857j–3.
1.15	Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (1950).	Referred to in the Clean Air Act at §1857j–3.

1.16 Regulations Governing Contractors and Subcontractors, as amended, 40 U.S.C. §276c (1958).	Referred to in the Clean Air Act at §1857j–3.
1.17 Federal Aid Highway Act, as amended, 23 U.S.C. §109(h), (j) (1970).	Direct reference in Act to EPA and air pollution at §109(h), (i), (j).
1.18 Airport and Airway Development Act, as amended, 49 U.S.C. §§1712(f), 1716(c)(4), (e)(1970).	Direct reference in Act to air pollution at §§1712(f), 1716(e)(1).
1.19 Amortization of Pollution Control Facilities, as amended, 26 U.S.C. §169(d)(1)(B), (3) (1969).	§169d(1)(B) makes direct reference to the Clean Air Act.
1.20 Interest on Certain Government Obligations, as amended, 26 U.S.C. §103 (1969).	At §103(c)(4)(F) industrial development bonds are exempt from taxes on air pollution control facilities.

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Regulations

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Guidelines and Reports

This subchapter is noted by a four-point system (4.1, 4.2, etc.). In this subchapter is found the statutorily required reports of EPA, published guidelines of EPA, selected reports other than EPA's and inter-departmental agreements of note.

UPDATING

Periodically, a supplement will be sent to the interagency distribution and made available through the U.S. Government Printing Office in order to provide an accurate working set of EPA Legal Compilation.

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NATIONAL AIR QUALITY STANDARDS ACT OF 1970

SEPTEMBER 17, 1970.—Ordered to be printed

Mr. BYRD of West Virginia (for Mr. MUSKIE, from the Committee on Public Works, submitted the following

REPORT

together with

INDIVIDUAL VIEWS

[To accompany S. 4358]

The Committee on Public Works, to which the bill (S. 4358), to amend the Clean Air Act as amended, was referred having considered the same, reports favorably thereon without amendment. An original bill (S. 4358) is reported in lieu of S. 3229, S. 3466, and S. 3546 which were considered by the Committee.

GENERAL STATEMENT

The committee bill would restructure the methods available to attack a critical and growing national problem of air pollution.

The legislation reported by the committee is the result of deep concern for protection of the health of the American people. Air pollution is not only an aesthetic nuisance. The Committee's concern with direct adverse effects upon public health has increased since the publication of air quality criteria documents for five major pollutants (oxides of sulfur, particulates, carbon monoxide, hydrocarbons and oxidants). These documents indicate that the air pollution problem is more severe, more pervasive, and growing at a more rapid rate than was generally believed.

The new information that carbon monoxide concentrations at levels damaging to public health occur in Chicago more than 22 percent of the time, and that other cities have similar problems with carbon monoxide and other pollutants, intensified the committee's concern to authorize a massive attack on air pollution. This bill is designed to provide the basis for such an attack.

Although the nature of the attack will differ from region to region, one objective will be the same: Air quality standards protective of the health of persons must be achieved within the 3-year period of the approval of plans to implement ambient air quality standards. The right of States to set more stringent standards of air quality has been preserved. Maintenance of existing high quality air is assured through provision for maximum control of new major pollution sources.

The protection of public health—as required by the national ambient air quality standards and as mandated by provisions for elimination of emissions of extremely hazardous pollution agents—will require major action throughout the Nation. Many facilities will require major investments in new technology and new processes. Some facilities will need altered operating procedures or a change of fuels. Some facilities may be closed.

The requirements for State action will be broadened. And the obligation on polluters will be greatly increased. What has been a program focused on uniquely critical areas, underfunded and inadequately manned, will become truly national in scope and will require an immediate increase in personnel and funding.

Implementation of standards will require other changes in public policy:

> Land use policies must be developed to prevent location of facilities which are not compatible with implementation of national standards.
>
> Transportation policies must be developed or improved to assure that the impact of pollution from existing moving sources is reduced to the minimum compatible with the needs of each region. Construction of urban highways and freeways may be required to take second place to rapid and mass transit and other public transportation systems. Central city use of motor vehicles may have to be restricted.
>
> Fuel policies must be developed to provide for use of clean fuels in urban areas. Development of control technology for fuel combustion byproducts must be accelerated. Greater use of natural gas for electric power generation may be required. And, to the extent that low sulfur coal and oil are available, they may be required for generating stations and home heating units in critical areas. Fuel import policies may need to be reevaluated.

If the Nation is to continue to depend on individual use motor vehicles, such vehicles must meet high standards. The bill

recognizes that a generation—or ten years' production—of motor vehicles will be required to meet the proposed standards. During that time, as much as seventy-five percent of the traffic may have to be restricted in certain large metropolitan areas if health standards are to be achieved within the time required by this bill.

In the Committee discussions, considerable concern was expressed regarding the use of the concept of technical feasibility as the basis of ambient air standards. The Committee determined that 1) the health of people is more important than the question of whether the early achievement of ambient air quality standards protective of health is technically feasible; and, 2) the growth of pollution load in many areas, even with application of available technology, would still be deleterious to public health.

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Therefore, the Committee determined that existing sources of pollutants either should meet the standard of the law or be closed down, and in addition that new sources should be controlled to the maximum extent possible to prevent atmospheric emissions.

The committee also was concerned that public participation, a unique feature of the Air Quality Act of 1967, should be preserved. The national air quality standards concept should not restrict effective citizen action. Not only does the bill assure an opportunity for a region to adopt standards more restrictive than the national standard, but public hearings on implementation plans also must be held. More importantly, the committee believes that public participation should not be limited to the development of standards and plans.

The proposed legislation emphasizes the need to accelerate enforcement action. To assure that Federal and State agencies aggressively pursue their responsibilities and to supplement their capacities, the bill provides a right of citizen action to seek enforcement of the provisions of the act. Actions to abate violations of timetables, of implementation schedules, of mission requirements, of performance and emission standards and of prohibitions can be initiated by the public.

The bill would provide other important tools to protect public health and to assure effective implementation of the purposes of the Act. By providing authority to prohibit the emission of pollutants which present a clear hazard to health, the bill shifts the burden of proof to the polluter to identify safe emission levels.

Extensive research must be carried out to accelerate knowledge

of pollution effects and control methods. New motor vehicle engines must represent substantial improvements over existing systems. The sale of fuels which would hinder effective, economic emission control systems can be prohibited.

Under the provision which would require mandatory licensing of pollution control techniques, technology (not otherwise available) that is developed to control emissions from either moving sources or new or hazardous sources would be available to any polluter.

The extent of Federal involvement in the development and maintenance of air pollution control programs would be broadened. The pace and degree of enforcement will be quickened.

The bill, for the first time, would establish a Federal capability to evaluate the problems of environmental noise and requires legislative recommendations to the Congress. While noise is not an "air pollutant" in the classic sense, it is a growing environmental problem which is national in scope and requires intensified evaluation and greater understanding. By authorizing the establishment of an Office of Noise Abatement Control, the bill would provide the proposed Environmental Protection Agency with a capacity to deal with this growing problem.

The committee emphasizes that the act, the deadlines proposed, and the new programs authorized will be without meaning unless supplemental manpower (doubling present staffing of National Air Pollution Control Administration) and supplemental funding (an increase of at least $44 million over the present budget request) are provided in this fiscal year.

Failure by the Executive Branch to request and Congress to approve these needed increases will substantially impair implementation of this

[p. 3]

legislation and make both the executive and legislative branches subject to charges of lack of commitment.

Within a short period, the pressures for additional staff and funds will also be felt by the States. Should the States fail to respond to that pressure, the deadlines established by the Act would require broader Federal involvement in regional and State programs.

In sum, this bill would extend the Clean Air Act of 1963 as amended in 1965, 1966, and 1967 to provide a much more intensive and comprehensive attack on air pollution. It would establish that

the air is a public resource, and that those who would use that resource must protect it from abuse, to assure the protection of the health of every American.

HEARINGS

Following enactment of the Air Quality Act of 1967, the Subcommittee on Air and Water Pollution held 13 days of oversight hearings in 1968 and 1969 on the progress and problems associated with the control of air pollution. The subjects covered included interstate air pollution compacts, air quality criteria, and a field hearing on air pollution problems in St. Louis, Missouri. In addition, 2 days of joint hearings were held with the Senate Commerce Committee on alternatives to the internal combustion engine.

On December 10, 1969, Senator Muskie introduced S. 3229, the Air Quality Improvement Act and Senator Montoya introduced Amendment No. 501 on fuels regulation on February 18, 1970. The Administration bill, S. 3466, the Clean Air Act Amendments of 1970, was introduced by Senator Scott on February 18, 1970. Senator Muskie introduced S. 3546, the National Air Quality Standards Act on March 4, 1970. Subsequently, 11 days of hearings were held in Washington, D.C. Three additional days of hearings were held in joint session with the Commerce Committee on legislation related to low-emission alternatives to the internal combustion engine (S. 3072).

In total, the Subcommittee on Air and Water Pollution held 15 days of oversight hearings in 1968 and 1969, and 15 days of legislative hearings in 1970.

DISCUSSION OF INTENT

SECTION 104. RESEARCH RELATING TO FUELS AND VEHICLES

The Air Quality Act of 1967 provided increased emphasis on research relating to fuels and vehicles. This provision included two special features not contained in the general research authority of section 103 of that act. First, appropriated funds were to remain available until expended, providing needed flexibility in the planning and scheduling of research and development and demonstration projects. Second, a legal basis was established for supporting demonstration projects involving the construction and installation of pollution control equipment in profit making facil-

ities in order to gain maximum benefit from expertise in the practical application of technology.

The amendments to section 104 contained in the bill, as reported, would provide increased emphasis on (1) fuel cleaning prior to combustion; (2) new and improved methods for combusting fuels which result in decreased atmospheric emissions; (3) methods for producing synthetic or new fuels which have a lower combustion potential for

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creating air pollution; and (4) increased efforts to develop and demonstrate alternatives to the internal combustion engine.

The legislation also would provide authority to make fleet purchases of low emission vehicles for research, development, and testing purposes which would involve purchase of 300 or more cars of a particular design, subject to actual operation and testing. The National Air Pollution Control Administration has developed a 6-year plan (fiscal 1970 to 1975) which contemplates expenditures of $89.1 million for the development of low-emission alternatives to the internal combustion engine. This plan includes both the control of emissions from conventional motor vehicles, and the development of unconventional low pollution motor vehicles. New authority for purchase of cars for research, development, and testing is intended primarily to facilitate this program.

The current research and development effort for controlling emissions from stationary sources has emphasized flue gas treatment and fuel cleaning (removal of contaminants from fuels before use). Increased emphasis should be placed on fuel cleaning as a method for reducing atmospheric emissions.

The Committee also intends that increased emphasis be placed on improving fuel combustion efficiencies. Although flue gas control technology offers a potential for improvement, the long-term answers may lie in magnetohydrodynamics, fuel cells and other energy conversion processes which emit less pollution per unit of fuel or per unit of energy.

The Committee recognizes that variations in the choice of fuels among different regions may offer a potential for reducing air pollution levels. However, fuels with a minimal adverse impact on the environment—such as natural gas and low sulfur fuels—may only be available in limited quantities. The bill therefore would authorize the development and demonstration of methods to produce synthetic or new fuels for both stationary and moving sources which will result in decreased atmospheric emissions.

The bill would authorize $450 million to carry out the provisions of this section: $125 million for fiscal year 1971; $150 million for fiscal year 1972; and $175 million for fiscal year 1973. Appropriations at that level could substantially accelerate the nation's capacity to reduce air pollution and to achieve and maintain high ambient air quality.

SECTION 105. GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

The Committee expects that the grantmaking authority in section 105 will be used to make three-to-one support (three-to-two in the case of maintenance support) grants available to States where the States are initiating or operating regional air pollution control programs. The intent is to enable States to qualify for the same degree of Federal support now available to intermunicipal and interstate agencies engaged in regional air pollution control activities. State-operated regional programs should supplant municipal or intermunicipal programs only in those cases where it is clearly advantageous, from the standpoint of effective air pollution control and efficient utilization of resources.

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There are a number of ways a State agency could establish such regional programs, and States should use their own administrative and organizational structure to achieve this purpose in a manner most suitable to their respective needs. In at least one State, Massachusetts, State supported regional programs are operating for the Boston and Springfield metropolitan areas. The Federal grant support to these programs would, however, be made to the State agency which in turn would fund the regional program; the employees of such regional programs are to be considered State employees.

Acting under section 301(a) of the Clean Air Act, the administration has formulated a plan for assigning Federally-employed personnel to State air pollution control agencies for periods of up to two years. The purpose of the plan is to help States build up their manpower resources. After a two-year assignment, each Federal employee in this program would be available for State employment, presumably in the same agency to which he had been detailed. The authority for the Department to make such personnel assignments would be retained; the additional provision

in section 105 would authorize the Department to make such assignments in lieu of cash awards under a grant.

It is the intent of the Committee, that as a condition for Federal grant support, air pollution control agencies either applying for, or receiving such support shall vigorously attack air pollution problems within their area of jurisdiction and effectively coordinate their efforts with those of the Federal air pollution control program. In order to achieve such performance in programs receiving Federal support, the Secretary would be authorized to suspend or deny such assistance until the performance of such program is adequate.

SECTION 106. INTERSTATE AIR QUALITY AGENCIES

Section 106 of the 1967 act authorized Federal support of up to 100 percent of the costs of interstate air quality planning programs for 2 years in order to expedite the development of regional control programs in interstate areas. The purpose of this provision was to provide a mechanism for planning in a coordinated fashion throughout regions where, except for State boundaries, the problems of air quality control are common.

It was hoped that planning agencies such as Councils of Government and regional planning commissions would be used. These agencies now function in some areas to provide consistency of approach between States and among local jurisdictions on a number of common problems, and were expected to perform a similar function for air quality planning.

The Committee is disappointed that the provisions of Section 106 have never been implemented, and that no interstate planning agency has been activated. The success of future regional efforts in air quality control requires sound planning and coordination of planning efforts on a comprehensive, regional basis. The bill, therefore, would retain the planning provision, but would delete the authority for the Secretary to establish Federal regional commissions to plan for implementation of air quality standards. The rigid timetables proposed by this legislation would obviate the value of this authority.

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SECTION 107. RESEARCH RELATING TO AIR POLLUTION EFFECTS

The Committee believes increased research is needed on the public health and welfare effects of air pollution agents—particu-

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larly long-term effects. This effort should be directed toward the accelerated development of more comprehensive air quality criteria.

The protection of the public health and welfare requires definitive knowledge of the causal relationships between exposure to air pollution agents—singly or in combinations—and health or welfare under varying environmental conditions. Knowledge of the relationship between the exposure to many air pollution agents and acute and chronic health effects is sufficient to develop air quality criteria related to such effects. Our knowledge of some of the chronic effects involving extended exposure over a period of years is limited. Increased research activities should concentrate in this area.

Concern for health effects must extend beyond "normal" segments of the population to effects on the very young, the aged, the infirm, and other susceptible individuals. Research efforts also must be directed toward improving knowledge of the causal relationships involving impacts on socio-economic conditions, vegetation, and materials.

The legislation would provide for an accelerated research program to improve knowledge of the contribution of air pollution agents to the occurrence of adverse effects on health.

The Committee anticipates that attention will be given to the following areas:

(1) The contribution of air pollution agents to the etiology of disease, including the health significance of physiological, toxicological, and biochemical effects;

(2) The additive and synergistic effects of exposure to air pollution agents;

(3) The health and welfare significance of the storage and accumulation of air pollution agents and their metabolites in human organs and tissues;

(4) The influence of air pollution agents on the impairment of human functions, increased accidents or absenteeism;

(5) The contribution of age, ethnic, social, occupational, smoking and other factors to susceptibility to air pollution agents; and

(6) The development of models to predict the public health and welfare effects of exposure to air pollution agents, singly or in combination.

The bill also would provide for the furtherance of knowledge on welfare effects, including effects on vegetation, animals, wild-

life, buildings, structures, and materials. This research effort should extend into welfare effects and aesthetics in their broadest definition, including the economy, visibility, weather, and climate.

Because prospective studies on the long-term effects of air pollution often extend beyond normal contract periods, and in order to maintain a continuity with respect to such epidemiological, clinical, and laboratory studies, the bill would provide contract authority for periods up to 10 years. For the purpose of carrying out this specific contract research, the bill provides an authorization of $15,000,000.

The ongoing research on health and welfare effects carried out under section 103 should not be replaced, but should be supplemented by this

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authority. It is important that health research activities authorized by this Act supplement research in other agencies. Careful evaluation of proposed research projects should precede funding to avoid duplication.

SECTION 108. AIR QUALITY CONTROL REGIONS

The Committee intends that the proposed revision of the procedure for the designation of air quality control regions will provide for early completion of this process. The new provisions would not eliminate the requirements for delineation of regional boundaries on the basis of factors that have a significant bearing on the implementation of air quality standards, such as meteorological, topographical, and urban-industrial factors which influence the distribution and concentration of pollution agents.

Ambient air standards designed to protect the health of persons must be implemented throughout the entire territory of every State. However, to attempt to do so through application of a single implementation plan for an entire State would overlook the fact that various sections of a State often may require substantially different emission control strategies. Each strategy must insure attainment of a quality of ambient air designed to protect the health of persons in all parts of the area to which the strategy is applied.

Accordingly, the bill would provide 90 days for the Secretary to complete designation of air quality control regions in interstate and major intrastate air pollution problem areas. This period is considered to be a sufficient time for completing the designation of

air quality control regions for the 91 areas already proposed for such designation. It is also considered to be sufficient time for the Secretary to designate additional air quality control regions covering interstate areas or any intrastate areas where there are major air pollution problems associated with particular concentrations of population and industry.

It should be noted that this 90-day period would produce no delay in the establishment and implementation of ambient air quality standards, since it would coincide with the period for the promulgation of national ambient air quality standards for pollution agents for which criteria have been issued. Moreover, any area of a State not included in an air quality control region designated by the Secretary during this period would automatically be considered an air quality control region for the purposes of the Act. In each State, the area not included in air quality control regions designated by the Secretary could be subdivided by the State into two or more air quality control regions. This step, which would take no additional time, would be accomplished as part of the State's plan for implementation of the national air quality standards and would be subject to review by the Secretary at the time that implementation plans are submitted for approval.

It should be emphasized that the provision for subdivision of States into regions is included in the bill to insure that factors bearing on effective implementation of air quality standards such as meteorology, topography, and urban-industrial concentrations will take precedence over mere administrative convenience. In other words, while it is considered necessary that areas not covered by the Federal designation process shall be designated as air quality control regions without further delay, it is also considered essential that States, in cooperation with the Secretary, make a determination as to whether

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such areas ought to be subdivided to effectively implement air quality standards.

SECTION 109. AIR QUALITY CRITERIA AND CONTROL TECHNIQUES

This proposed legislation would require acceleration of the issuance of air quality criteria and information on control techniques as an integral part of the system for adoption of ambient air quality standards and implementation plans.

Pollution agents which would be subject to the provisions of

this section would be those which are emitted from widely distributed air pollution sources and generally present in the ambient air in all areas of the Nation.

Air quality criteria for five pollution agents have already been issued (sulfur oxides, particulates, carbon monoxide, hydrocarbons, and photochemical oxidants). Other contaminants of broad-national impact include fluorides, nitrogen oxides, polynuclear organic matter, lead, and odors. Others may be added to this group as knowledge increases. The bill would require that air quality criteria for these and other pollutants be issued within 13 months from enactment. If the Secretary subsequently should find that there are other pollution agents for which the ambient air quality standards procedure is appropriate, he could list those agents in the Federal Register, and repeat the criteria process.

Reports on control techniques, as under existing law, would be issued simultaneously with the publication of criteria. The Committee recognizes that the States will continue to need this information to develop meaningful programs for implementation of ambient air quality standards on a regional basis.

The Committee believes that criteria and control technology documents shoud be periodically reviewed and re-issued to ensure currency. In addition, control techniques information should be periodically modified to reflect information developed under sections 104 and 113.

The Secretary would also be required to issue information on control techniques for air pollution agents for which emission standards are to be established under Section 114 and Section 115 and for which new source standards of performance are to be established under Section 113. It is expected that the Secretary would provide documentation, as appropriate, on the control techniques, methods, processes, or systems available for the purpose of complying with such emission standards or standards of performance.

The Committee does not intend that the recommended control techniques documents should lock in existing technology. As was pointed out by Dr. Aaron Teller, "the inhibition of innovation is the most dangerous consequence of this language. Air pollution control requires a new and unique technology."

The Committee intends that the information provided pursuant to this section should serve as guidance to States, not as limitations on control technology innovation.

SECTION 110. NATIONAL AIR QUALITY STANDARDS AND GOALS

This section would provide for publication and promulgation of national ambient air quality standards at a level which will protect the health of persons. In setting such air quality standards the Secretary

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should consider and incorporate not only the results of research summarized in air quality criteria documents, but also the need for margins of safety. Margins of safety are essential to any health-related environmental standards if a reasonable degree of protection is to be provided against hazards which research has not yet identified.

Following the publication of any proposed national ambient air quality standard, the Secretary would provide up to 90 days for the receipt and evaluation of comments. Since the issuance of air quality criteria would precede the promulgation of such national standards, and since expert advisory committees would continue to be consulted in the preparation of air quality criteria, 90 days is considered sufficient time for the presentation and evaluation of additional information and opinions that may have a bearing on the national ambient air quality standards.

Although the option of adopting ambient air quality standards more stringent than the national health minimum for any air quality control region is preserved for the States, the Secretary would be required to set a national minimum standard of air quality which will protect the health of persons regardless of where such persons reside. This mechanism is recommended by the committee to expedite the establishment and implementation of ambient air quality standards.

In requiring that national ambient air quality standards be established at a level necessary to protect the health of persons the Committee recognizes that such standards will not necessarily provide for the quality of air required to protect those individuals who are otherwise dependent on a controlled internal environment such as patients in intensive care units or newborn infants in nurseries. However, the Committee emphasizes that included among those persons whose health should be protected by the ambient standard are particularly sensitive citizens such as bronchial asthmatics and emphysematics who in the normal course of daily activity are exposed to the ambient environment. In establishing an ambient standard necessary to protect the health of

these persons, reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group.

Ambient air quality is sufficient to protect the health of such persons whenever there is an absence of adverse effect on the health of a statistically related sample of persons in sensitive groups from exposure to the ambient air. An ambient air quality standard, therefore, should be the maximum permissible ambient air level of an air pollution agent or class of such agents (related to a period of time) which will protect the health of any group of the population.

For purposes of this description, a statistically related sample is the number of persons necessary to test in order to detect a deviation in the health of any person within such sensitive group which is attributable to the condition of the ambient air.

Within 30 days after enactment the Secretary would be required to publish proposed national air quality standards for those pollutants covered by existing air quality criteria (sulfur oxides, particulate matter, carbon monoxide, hydrocarbons, and photochemical oxidants). Since these criteria have been available for some time, it is realistic to expect that proposed national standards for these five pollution agents would be published within the 30-day period. Proposed national air quality standards for pollutants for which criteria would be issued

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subsequent to enactment would be published simultaneously with the issuance of such criteria. These pollutants would include nitrogen oxides, lead, polynuclear organics, odors, and fluorides.

National air quality standards are authorized because the Committee has recognized that protection of health is a national priority, but the Committee also recognizes that man's natural and man-made environment must be preserved and protected. Therefore, the bill provides for the setting of national ambient air quality goals at levels necessary to protect public health and welfare from any known or anticipated adverse effects of air pollution—including effects on soils, water, vegetation, man-made materials, animals, wildlife, visibility, climate, and economic values. To implement this provision the sections of existing law relating to the issuance of air quality criteria have been modified to require that air quality criteria documents include, to the extent practicable, information on any known or anticipated adverse

effects of air pollution, including such effects on all the environmental and economic values listed above. Those criteria which have been issued as well as those planned for January of 1971 must be revised to include this information. Until such revisions are made, the Secretary should publish interim guidelines to assist the States in developing plans for the implementation of goals.

The Committee is aware that there are many gaps in the available scientific knowledge of the welfare and other environmental effects of air pollution agents. As indicated in the discussion of section 107, the Committee expects that the Department will intensify research on environmental and other economic effects of air pollution. A great deal of basic research will be needed to determine the long-term air quality goals which are required to protect the public health and welfare from any potential effects of air pollution. In the meantime, the Secretary will be expected to establish such national goals on the basis of the best information available to him.

The bill would not require the attainment of the air quality goals within a specified time period. Nevertheless, it is the Committee's view that progress in this direction should be made as rapidly as possible. In areas where air pollution levels are already relatively low, the attainment and maintenance of these goals should not require an extended time period. In areas where current air pollution levels are already equal to, or better than, the air quality goals, the Secretary should not approve any implementation plan which does not provide, to the maximum extent practicable, for the continued maintenance of such ambient air quality. Once such national goals are established, deterioration of air quality should not be permitted except under circumstances where there is no available alternative. Given the various alternative means of preventing and controlling air pollution—including the use of the best available control technology, industrial processes, and operating practices—and care in the selection of sites for new sources, land use planning and traffic controls—deterioration need not occur.

SECTION 111. IMPLEMENTATION PLANS

The establishment alone of ambient air quality standards has little effect on air quality. Standards are only the reference point for the analysis of the factors contributing to air pollution and the imposition

of control strategy and tactics. This program is an implementation plan.

The Committee recognizes that the implementation plan is the principal component of control efforts for pollution agents for which national standards are established. It is this program which must be effective if the Nation is to achieve the quality of air which the bill would mandate in a relatively short period of time.

The implementation plan provision in the bill has its origin in existing law. The Committee recognized that because the proposed bill would require a great deal in a short period of time and because the brevity of the provision in existing law has led to uneven and inadequate interpretation, the character of an implementation plan must be specified and the alternative methods of achievement listed. The Committee bill would require that a rigorous time sequence be met in the development of the implementation plan and would provide for the substitution of Secretarial authority if the State plan, or a portion thereof, is inadequate to attain the quality of ambient air established by the nationally promulgated ambient air quality standard.

The bill would provide that within nine months after the date of promulgation of any national ambient air quality standard, each State would have to adopt and submit to the Secretary for each air quality control region or portion thereof in such State a plan which would provide for the attainment of the national ambient air quality standard within three years after the date of approval of such plan, or after the date of promulgation if the Secretary established such plan or any portion thereof.

The Committee bill, based upon experience gained under existing law, would require that each State, after reasonable notice and a public hearing, adopt a plan for the implementation of standards at least as stringent as the national ambient air quality standards. Any implementation plan could be developed for a region only after participation by the public. Public participation can only be meaningful if there is reasonable notice and full disclosure of information prior to public hearings. The Committee expects that appropriate Federal, State, and local officials, citizens and affected industry groups will consider the development of the implementation plan the central element of this aspect of the legislation.

The Committee bill would establish certain tools as potential parts of an implementation plan and would require that emission requirements be established by each State for sources of air pol-

lution agents or combinations of such agents in such region and that these emission requirements be monitored and enforceable.

In addition to direct emission controls, other potential parts of an implementation plan include land use and air and surface transportation controls. These should insure that any existing or future stationary source of air pollution will be located, designed, constructed, equipped, and operated, and that moving sources will be located and operated so as not to interfere with the implementation, maintenance, and enforcement of any applicable air quality standard or goal.

The Committee acknowledges that this would require each region to make difficult judgments about the siting of facilities which may emit pollution agents, including decisions to prohibit Section 113, would con-

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tribute to a violation of regional air quality standard. These factors would necessitate long-term decisions about the character of the growth and development of such region.

In air quality control regions where present air quality is below the standard, rigorous restrictions must be placed on existing sources to provide a margin for future growth, or only pollution-free growth, development and expansion will be possible.

This section would also provide for intergovernmental cooperation in the development of air quality programs which at the minimum must prevent facilities in one State from contributing to the violation of ambient air quality standards in an adjacent State, whether or not the adjacent State is part of the same air quality control region.

The Committee has added provisions that would require the States to develop enforceable information, recordkeeping, and monitoring requirements similar to those which the Secretary would be authorized to establish in the bill.

The Committee recognizes that during the next several years, the attainment of required ambient air quality in many of the metropolitan regions of this country will be impossible if the control of pollution from moving sources depends solely on emission controls. The Committee does not intend that these areas be exempt from meeting the standards. Some regions may have to establish new transportation programs and systems combined with traffic control regulations and restrictions in order to achieve

ambient air quality standards for pollution agents associated with moving sources.

The Committee realizes that changes or restrictions in transportation systems may impose severe hardship on municipalities and States, and it urges that agencies of the Federal Government make available any relevant program assistance to the States and regions to meet these obligations. The highway program, various housing and urban development programs and other sources of assistance should be examined in this connection.

The implementation plan section of the proposed bill would specifically provide that, to the extent necessary, each region develop motor vehicle inspection and testing programs for which it is eligible to receive assistance under section 208 of the proposed bill. The Committee believes that this is an extremely important provision, because used vehicles, particularly those manufactured before 1970, are among the most significant sources of air pollution. It is also a class of air pollution sources for which the regions and States have better opportunities to control.

In considering alternative means of controlling emissions of air pollution agents from used vehicles, the Committee was unable to develop a feasible national system. The Committee rejected ideas ranging from the imposition of a retroactive installation obligation on automobile manufacturers to a Federal subsidy program.

Section 211 of the Act provides for Secretarial certification of used car emission control devices and systems in order to protect the public from sham or inadequate devices and systems. Following the certification of such devices, the regions and States would be encouraged in the development of implementation plans to adopt requirements for the installation of such devices. The Committee believes at this time that regulations relative to the retroactive application of emission control devices and methods is manageable only at the State and regional

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level and expects and hopes that the regions and States will be innovative in this area.

As pointed out in the discussion of section 211, used vehicles contribute substantially to air quality deterioration. The States would be expected to act to improve used vehicle performance and should consider requiring the installation of certified control devices or systems or, at least, the tuning of used vehicles before resale.

Under this Section the Secretary would be required to approve the implementation plan only if it specified the boundaries of the region to which such plan applies. This requirement is necessary to provide review of the adequacy of implementation plans for regions which the Governor may have sub-divided pursuant to the air control region designation provisions of section 108.

In order to insure achievement of air quality necessary to protect the health of persons within the period specified in the bill, time constraints would be placed on the Secretary's review and approval authority. The bill recognizes that the Secretary must have the authority to replace all or any portion of any implementation plan submitted by a State where attainment of the nationally ambient air quality standard within the time required is not provided. The bill would provide that the Secretary must approve or reject any implementation plan submitted by a State within four months of the date required for its submission. If he rejected the plan or any portion of it he would have to promulgate an alternative plan or portion thereof within an additional two months.

The Committee recognizes that pursuant to provisions of the 1967 Act many States are developing or have developed implementation plans for designated air quality control regions. To the extent possible these plans should not be disrupted. Therefore, the bill would specifically provide that implementation plans and ambient standards developed under existing law shall remain in effect until such time as the Secretary determines that all or any portion of such standards or plans are inadequate to meet the new obligations placed upon these regions. If the Secretary made such a determination, he would be required to make recommendations to the appropriate State or States of changes needed to meet the additional requirements of the Act. If such State or States failed to make the proposed revisions in existing implementation plans, the Secretary would be required to promulgate the necessary changes.

The Committee also recognizes that it is possible that an implementation plan approved or promulgated by the Secretary may later be found inadequate to attain the national ambient air quality standard(s). Whenever information reveals that an approved or promulgated implementation plan is inadequate, the Secretary would be required to act to revise such plan. Because such revision may delay implementation beyond the three year deadline the Committee bill would provide that the Secretary may

extend the period of time required for attainment of the national ambient air quality standard for one year.

Finally, the Committee would recognize that compliance with the national ambient air quality standards deadline may not be possible. If a Governor judges that any region or regions or portions thereof within his State will not meet the national ambient air quality standard within the time provided, the bill would authorize him—one year

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before the deadline—to file a petition against the United States in the District Court of the United States for the district where such region or portion thereof is located for relief from the effect of such expiration.

The Committee proposes to have such actions brought before the District Court constituted as a three-judge court with such actions taking precedence on the docket over all other causes and directing that they be expedited in every way.

The Committee expects that an extension of time would be granted only as a last alternative. Therefore, the bill would provide that the court could grant relief in the paramount interest of the United States and in the public interest and general welfare of the persons in such region only after finding that substantial efforts had been made to protect the health of persons in such regions, and that means to control emissions causing or contributing to the failure had not been available for sufficient time or that the failure was a result of a Federal facility operating under an exemption granted by the President. The bill would restrict relief to one-year extensions of the deadline. Nothing in this subsection should affect any provision or obligation pursuant to any implementation plan which is not the subject of the request for extension. The Secretary would be required to make changes in the implementation plan to bring the region into compliance with the applicable standard or standards within the year extension granted by the court.

The severe time limitations in the bill for filing an implementation plan for ambient air quality standards may limit the capacity of States to act simultaneously on plans for national ambient air quality goals. The bill would provide that the Secretary may extend for 18 months the period for submission of any portion of any implementation plan. The development of the portion of the implementation plan for the achievement of an air quality goal re-

quires different and more extensive analysis than that required to establish an implementation plan to achieve national ambient air quality standards. Therefore, the Committee bill would provide an additional period for such development for those regions where it is needed.

SECTION 112. STATE STANDARDS AND PLANS TO ACHIEVE GREATER AIR QUALITY CONTROL

Section 112 would restate the intent of Section 109 of the Air Quality Act of 1967 which provided assurance that States, localities, intermunicipal and interstate agencies may adopt standards and plans to achieve a higher level of ambient air quality than approved by the Secretary. The section would be revised to provide that such States, localities, intermunicipal and interstate agencies may adopt such more restrictive standards and plans and may establish timetables which achieve standards in a shorter period of time than required by Section 111 of this Act. The authority preserved by this section would apply to all aspects of the legislation except where the Congress has specifically preempted authority to act.

SECTION 113. NEW SOURCE PERFORMANCE STANDARDS

The provisions for new source performance standards are designed to insure that new stationary sources are designed, built, equipped, operated, and maintained so as to reduce emissions to a minimum.

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The performance standards should be met through application of the latest available emission control technology or through other means of preventing or controlling air pollution. The maximum use of available means of preventing and controlling air pollution is essential to the elimination of new pollution problems while cleaning up existing sources.

As used in this section, the term "available control technology" is intended to mean that the Secretary should examine the degree of emission control that has been or can be achieved through the appication of technology which is available or normally can be made available. This does not mean that the technology must be in actual, routine use somewhere. It does mean that the technology must be available at a cost and at a time which the Secretary

determines to be reasonable. The implicit consideration of economic factors in determining whether technology is "available" should not affect the usefulness of this section. The overriding purpose of this section would be to prevent new air pollution problems, and toward that end, maximum feasible control of new sources at the time of their construction is seen by the committee as the most effective and, in the long run, the least expensive approach.

Major new facilities such as electric generating plants, kraft pulp mills, petroleum refineries, steel mills, primary smelting plants, and various other commercial and industrial operations must be controlled to the maximum practicable degree regardless of their location and industrial operations. It should be emphasized, however, that these examples are not intended to limit the Secretary's latitude in prescribing new source standards performance. While the examples cited are relevant examples of sources which would be subject to this provision, the Secretary would be expected to test and prescribe standards for any other categories of major stationary sources from which emissions would cause or contribute to endangerment of public health and welfare. New stationary sources which the administration has advised the committee to expect would be subject to the provisions of this section to include:

Cement manufacturing;
Coal cleaning operations;
Coke byproduct manufacturing;
Cotton ginning;
Ferroalloy plants;
Grain milling and handling operations;
Gray iron foundries;
Iron and steel operations;
Nitric acid manufacturing;
Nonferrous metallurgical operations (e.g. aluminum reduction, copper, lead, and zinc smelting);
Petroleum refining;
Phosphate manufacturing;
Phosphoric acid manufacturing;
Pulp and paper mill operations;
Rendering plants (animal matter);
Sulfuric acid manufacturing;

Soap and detergent manufacturing;
Municipal incinerators; and
Steam electric powerplants.

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The Secretary has authority to add to this list if he finds that other new sources fall within the requirement of this section.

"Standards of performance," a term which has not previously appeared in the Clean Air Act, refers to the degree of emission control which can be achieved through process changes, operation changes, direct emission control, or other methods. The Secretary should not make a technical judgment as to how the standard should be implemented. He should determine the achievable limits and let the owner or operator determine the most economic, acceptable technique to apply.

The bill contains provisions for certification of compliance with new-source performance standards. It should be emphasized that the bill would provide for certification at the time a new facility begins operation, not prior to operation. The complexities of predicting emissions performance on the basis of blueprints and specifications make it undesirable to provide for preconstruction certification. However, preconstruction review of proposed plans for new facilities is desirable, since it would enable the Secretary (or States, where certification authority is delegated) to render advice and assistance to affected parties without making a commitment to grant certification. More importantly, standards of performance imply a result, not a technical judgment. Therefore, preconstruction certification would be inconsistent with this approach.

Industrial firms would be required to increase efforts to insure that new plants and equipment perform in accordance with the promises and commitments made by plant designers and equipment builders. New-source standards would thus provide maximum incentives to expand technology to insure adequate margins of safety.

The committee recognizes that the construction of major new industrial facilities in some regions may conflict with implementation plans for national air quality standards and goals—even where such new facilities are designed, equipped, and operated so as to comply with applicable Federal standards of performance. This is most likely to occur in places where existing levels of air pollution are excessive. Accordingly, the bill would provide that

new-source certification procedures must include preconstruction review of the location as well as the design of affected new facilities so that certified new sources would not hinder the implementation of air quality standards and goals.

Standards of performance should provide an incentive for industries to work toward constant improvement in techniques for preventing and controlling emissions from stationary sources, since more effective emission control will provide greater latitude in the selection of sites for new facilities. Therefore, it should be clear that standards of performance are not static. The Secretary would be directed to review and promulgate new or modified standards whenever new technology processes or operating methods become available. When sufficient staff and funds are available, the review and modification should take place as frequently as possible to avoid having new plants comply with outdated standards.

New stationary sources subject to standards of performance established under this Act would be expected to be in compliance with those standards throughout their operational life. If greater control of stationary source emissions is necessary at any time to insure compli-

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ance with air quality standards in a particular air quality control region, the bill would require that new requirements be imposed by a State or locality on any sources in that region, including those sources already built and operated in compliance with the Federal standards of performance. In such instances, however, it is expected that States would allow a reasonable time for improvements to be made.

Finally, it should be noted that the bill would require the Secretary to delegate the certification function to any State which adopts a certification procedure which the Secretary finds meets the requirements set forth in this section. It is expected that every effort will be made to have States assume this responsibility.

Some States, however, may have to adopt new legislation to meet the requirements of section 113(d)(1). The Committee sees no reason why the Secretary should not permit a State to perform as much of the work involved in certification as it can under its existing State law until such time as the State has adopted the necessary enabling legislation. It should be clear that when certification authority is delegated, the Secretary would retain

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unrestricted enforcement authority. However, it is expected that the Secretary would take enforcement action only where a State does not meet its obligations.

SECTION 114. EMISSION STANDARDS FOR SELECTED AGENTS

Knowledge and experience gained under the Air Quality Act of 1967, particularly through the development of criteria documents, has revealed that pollution agents and combinations of such agents fall into three general categories. The first of these categories are those pollution agents which are emitted from diverse stationary and moving sources into the ambient air and which are generally detectable through monitoring devices and systems. These pollution agents are those for which the criteria documents are to be issued and for which national ambient air quality standards and implementation plans are to be established.

The second category of air pollution agents includes those which are hazardous to the health of persons as defined in section 115.

The third category of pollution agents includes those agents which are not emitted in such quantities or are not of such a character as to be widely present or readily detectable on a continuous basis with available technology in the ambient air. The presence of these agents is generally confined, at least for detection purposes, to the area of the emission source. The information available at this time indicates that the following list of substances are most likely to be considered as the agents to be covered under this section:

> Arsenic, chlorine gas, hydrogen chloride, copper, manganese, nickel, vanadium, zinc, barium, boron, chromium, selenium, pesticides, radioactive substances.

The bill would limit the imposition of emission standards for these selected air pollution agents to those categories of stationary sources which are subject to standards of performance under section 113. Available information indicates that these pollution agents are generally emitted from the stationary sources that would be subject to performance standards.

The Committee recognizes that the timing of the control of such pollution agents should be left to the discretion of the Secretary. It is

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expected that knowledge with respect to some selected pollution

agents would justify immediate application of emission standards, while knowledge with respect to others may not justify the same urgency. Therefore, the bill would establish a framework which would provide that the Secretary may initiate the development of emission standards for such selected pollution agents at any time following the date of enactment. In any event, the Secretary would be required to publish an initial list of agents for which a control under this authority is appropriate within 180 days after enactment of this section. It is expected that the Secretary would select for earliest action those agents on the list which clearly affect the public health. The Committee intends that the Secretary establish a sequence for the setting of emission standards for the remainder over the next several years.

However, the Committee emphasizes that some pollution agents included in this list could become subject to the ambient air quality standards or hazardous substances provisions when new information is developed.

Emission standards developed under this section would be applied to existing stationary sources. However, the Committee recognizes that certain old facilities may use equipment and processes which are not suited to the application of control technology. The Secretary would be authorized therefore to waive the application of standards established under this section to such stationary sources which have short life expectancies after requiring the application of the maximum technology which could be applied to such facilities and after determining that continued emissions would not jeopardize public health.

The bill would provide that emission standards established under this section shall become effective on a date specified but not to exceed 24 months from the date of such promulgation.

Consistent with the provisions of other sections, owners and operators of stationary sources to which emission standards would apply would be responsible for furnishing information relating to emissions, and be required to install, use and maintain monitoring equipment for the purpose of determining compliance with emissions standards. Costs of such monitoring equipment or methods should be borne by the owner or operator.

In this section the bill also would incorporate provisions designed to acquire and make available to the public information regarding compliance with the applicable emission standards. The Committee believes that the public right to know what is being emitted overrides the proprietary character of such information.

The committee intends that information other than emission data should be confidential only after a showing by the owners and operators that such records, reports or infornation would divulge trade secrets or secret processes entitled to protection under section 1905 of Title 18 of the United States Code.

The bill would provide that violations of emission standards established under this section be enforced through the general enforcement provisions of section 116. However, it is provided that the Secretary should delegate enforcement authority to any State which develops an enforcement framework which the Secretary determines adequate to implement the purposes of this section. It should be noted that nothing in such delegation shall in any way affect the Secretary's authority and obligation to act at any time to enforce violations of such emission standards.

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SECTION 115. EMISSION STANDARDS FOR HAZARDOUS AGENTS

The proposed new section 115 would authorize the Secretary to prohibit emissions or to establish standards applicable to emissions of air pollutants "whose presence, chronically or intermittently, in trace concentrations in the ambient air, either alone or in combination with other agents, causes or will cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible damage to health."

On the basis of information presented to the Committee, it is clear that the above definition will encompass a limited number of pollutants. Asbestos, cadmium, mercury, and beryllium have been identified as pollution agents which could be subject to emission prohibitions or standards to be established under section 115. It would be the Secretary's responsibility to determine whether there are additional pollutants (including any of those expected to be subject to section 114) which also should be covered under section 115.

In writing a relatively restrictive definition of hazardous agents, the Committee recognized that a total prohibition on emissions is a step that ought to be taken only where a danger to health, as defined, exists. It should be noted that emission standards for pollutants which cannot be considered hazardous (as defined in section 115) could be established under section 114. Thus, there should be no gaps in control activities pertaining to stationary source emissions that pose any significant danger to public health or welfare.

This section, would establish an administrative procedure to regulate and control the emission of such hazardous materials. Under this procedure, the Secretary would be authorized to designate from time to time those air pollution agents or combinations of agents which present a hazard to the health of persons as indicated by available material evidence. Following designation the Secretary would be required to publish a proposed prohibition of emissions of such agents or combination of such agents from any stationary source.

The Committee recognizes that some of these hazardous pollutants, such as cadmium and beryllium, are present in nearly all raw materials. Thus, beryllium and cadmium appear as trace impurities in steel making and other raw material processes, in addition to the processing at beryllium and cadmium plants. Recognizing that complete control of beryllium from steel plants, for example, may not be necessary or practicable, the Committee has provided the Secretary with authority to differentiate among categories of sources in establishing prohibitions under section 115.

After public hearings and within six months of the publication of such proposed prohibition, the Secretary would be required to promulgate such prohibition, unless he found on the basis of a preponderance of the evidence, that the air pollution agent was not, in fact, hazardous to the health of persons—or that a greater than zero emission could be permitted without presenting a hazard to health.

The bill would provide that any prohibition should become effective upon promulgation and that any emission standard for a hazardous substance established under this section should become effective no later than 180 days after such promulgation.

The Committee recognizes that the violation of a prohibition or emission standard for any substance which is hazardous to the health of persons requires an expeditious enforcement procedure. Conse-

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quently, the bill would provide that upon evidence of any violation the Secretary should bring suit for immediate abatement, including a permanent injunction or restraining order, in the United States District Court in the District in which the source is located.

SECTION 116. FEDERAL ENFORCEMENT

The Clean Air Act as amended recognizes that the primary responsibility for control of air pollution rests with State and local government. While section 116 would restructure the enforcement authority available to the Secretary, the Committee does not intend to diminish either the authority or the responsibility of State and local governments. As is clear in sections 111, 113 and 114 the States would be expected to have or to obtain adequate authority to ensure that the provisions of the act are enforced.

The Committee recognizes, however, that the authority available under existing law has not been adequate to move quickly to abate violations of standards. The Committee also recognizes that the provisions of existing law, although less than adequate, have not been used to the fullest extent practicable. The new authority provided in section 116 would provide the Secretary with the necessary tools to act swiftly to abate violations of the provisions of this Act. The Secretary should not interfere with effective State action and should take into consideration any recommendations for abatement action which have resulted from existing enforcement procedures.

If the Secretary should find that a State or local pollution control agency is not acting to abate violations of implementation plans or to enforce certification requirements, he would be expected to use the full force of Federal law. Also, the Secretary should apply the penalty provisions of this section to the maximum extent necessary to underwrite the strong public demand for abatement of air pollution and to enforce compliance with the provisions of the Act.

If the Secretary and State and local agencies should fail in their responsibility, the public would be guaranteed the right to seek vigorous enforcement action under the citizen suit provisions of section 304.

Because attainment of ambient air quality is possible only through the enforcement of precise and objective emission controls the Committee bill would delete the enforcement requirement for the abatement of violations of the air quality standard. The precise and objective emission controls "subject to enforcement" would include but not be limited to emission requirements, emissions standards, standards of performance, prohibitions of emissions, schedules and timetables of compliance and other

requirements for recordkeeping and the installation of monitoring equipment.

The bill would also delete the cumbersome conference and hearing procedures in the existing law. Such administrative procedures were appropriate when criteria did not exist and when evidentiary-gathering devices were needed to relate pollution to ambient air quality. The new formula proposed would authorize the Secretary to issue orders requiring the abatement of any violation of any performance standard, emission standard, or implementation plan, including violations of emission requirements and schedules of compliance. The Secretary would be authorized to issue such an order when he determined that [p. 21]

a State had not satisfactorily administered its enforcement authority under its implementation plan or when there was a violation of Federal standards.

In view of the need for streamlined and expedited enforcement procedures, the Committee intends that the judgment of the Secretary in this instance shall not be reviewable.

In the event that the violation alleged were of an emission control requirement, the time specified in such order for the initiation of abatement action could not exceed 72 hours from the time such order was received. The Secretary would be required to furnish copies of abatement orders to appropriate State enforcement personnel. In the event an order were issued to a corporation, the orders should also be served to appropriate corporate officers.

Any order issued by the Secretary should remain in effect until such time as the Secretary determines that the violation no longer exists and gives written notice of such determination to the violator. The Secretary would have an obligation to review efforts taken pursuant to any order to assure that the order will be withdrawn when compliance is achieved.

If any order issued by the Secretary is not met within the time specified, or if the efforts to abate a violation are unsatisfactory, the Secretary would be authorized to bring a civil action for appropriate relief, including a permanent or temporary injunction or restraining order, in the District Court of the United States for the district in which the alleged violation occurred or is occurring. Failure or refusal to comply with an order would be punished, upon conviction, by a fine of not more than $25,000.

The Committee recognizes that an owner or operator who is issued a compliance order by the Secretary should be able to challenge such an order without being required to refuse to comply with it, thus risking criminal and civil penalties. Therefore, the bill provides that voluntary compliance would not preclude the owner or operator from initiating an action in the Federal district court to challenge such an order.

In addition to providing for enforcement of promulgated and approved standards, implementation plans, and other emission controls, the bill would authorize the enforcement of correlative and necessary procedural requirements such as furnishing or providing access to information, data and reports, and requirements for the installation of monitoring equipment, or denial of access to copying of records. The expense of installing monitoring equipment required by the Secretary would be borne by the owner or operator of any pollution source. The Secretary would also be given authority to make investigations of buildings, structures, monitoring equipment or other facilities subject to emission requirements, emission prohibitions, and waivers of structures, monitoring, equipment or other facilities subject to standards of performance as established under the Act. Authority to enter after presentation of proper credentials would be provided.

The Committee recognizes that sanctions under existing law have not been sufficient to encourage compliance with the provisions of the Clean Air Act. Therefore, the Committee proposes to increase significantly the penalties for knowing violations of provisions of the Act. A conviction for a knowing violation would be subject to a penalty of $25,000 per day or imprisonment for one year or both.

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If conviction is for a second knowing violation, the penalty could be increased to $50,000 per day of the violation or by imprisonment for two years or both. In addition, civil penalties would be added for knowing violation of the procedural requirements of the Act such as recordkeeping, report filing, information availability or falsifying, tampering with, or rendering inaccurate monitoring devices.

The Committee believes that if the timetables established throughout the Act with respect to ambient air quality standards necessary to protect public health are to be met, the threat of

sanction must be real, and enforcement provisions must be swift and direct. Abatement orders, penalty provisions, and rapid access to the Federal District Court should accomplish the objective of compliance.

SECTION 118. CONTROL OF POLLUTION FROM FEDERAL FACILITIES

This section would require every Federal agency with control over any activity or real property, to provide national leadership in the control of air pollution in such operations.

Evidence received in hearings disclosed many incidents of flagrant violations of air and water pollution standards by Federal facilities. The Committee believes that lack of Federal leadership has been detrimental to the clean air effort. The Federal Government cannot expect private industry to abate pollution if the Federal Government continues to pollute at will. This section requires that Federal facilities meet the emission standards necessary to achieve ambient air quality standards as well as those established in other sections of Title I.

The Committee recognizes, however, that it may be in the paramount interest of the United States that a plant or facility not achieve full air pollution control within the time required. Therefore, the bill would provide plant-by-plant exceptions, on the basis of a statement by the President, for a period of no more than one year.

New one-year extensions could be granted on the basis of a subsequent statement by the President. The President would be required to report each January to the Congress on any such exception during the preceding year, together with a detailed explanation of the need to grant such exceptions.

No exception could be granted due to lack of appropriations, unless the Congress specifically rejected a request for funds that appeared as a line item in the Budget request.

SECTION 202. ESTABLISHMENT OF STANDARDS

Title II of the Clean Air Act has been revised to provide additional authority to the Secretary to regulate sources of pollution which move or may move in interstate commerce, or which contribute to endangerment of the health and welfare of the people of the United States.

With the exception of the statutory determination set forth in section 202(b) which requires that the automobile, the major

moving source of pollution, meet a rigid timetable and a high degree of emission control compliance, the Secretary would be provided flexibility to act to abate emissions from new and existing aircraft, new and existing vessels and boats, new and existing diesel engines for railroads, and new and existing trucks and buses and other commercial vehicles.

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The existing law requires the Secretary to establish standards on the basis of economic and technological feasibility. The proposed bill would require the Secretary to make a judgment on the contribution of moving sources to deterioration of air quality and establish emission standards which would provide the required degree of control. The Secretary is expected to press for the development and application of improved technology rather than be limited by that which exists. In other words, standards should be a function of the degree of control required, not the degree of technology available today.

The regulatory authority in section 202(a) would be essentially the same as existing law, except that prior to promulgating standards the Secretary would be required to consult with advisory committees and other technically competent groups, to the maximum extent practicable, to develop the broadest possible base for the development of standards.

The authority contained in section 202 is expanded by this bill to include authority to set air pollution emission standards for aircraft, vessels, commercial vehicles, and vehicles such as locomotives and self-propelled agricultural equipment. Under this new authority emissions standards may be set for new and existing commercial vehicles, vessels, and aircraft.

Standards for vessels and locomotives are appropriate because their use characteristically involves interstate travel, with large numbers of them congregating in ports and yards in or near areas of high population and air pollution concentration.

A similar problem of concentration exists with regard to aircraft. While operations of aircraft at major airports do not make a significant contribution to total ambient levels of pollution in urban areas, they pose a serious problem in the vicinity of such airports.

Based on emission characteristics of aircraft engines presently in use, increased ambient levels of nitrogen oxides and particulates

in the vicinity of an airport with about 2 million operations a year will result from air traffic alone.

The authority provided in section 202(a) would continue to be available to the Secretary to establish standards for light duty motor vehicles (passengar cars) during the period prior to and following the effective date of the standards established by subsection (b).

It is expected that section 202(a) authority would be used for regulation of particulate emissions. No present measurement techniques exist to evaluate or establish standards for such particulate emissions. Such standards cannot be established on the basis of 1970 vehicles as required by subsection (b) because measurement techniques will not exist until 1972. At such time as measurement methods are developed the Secretary would be expected to establish standards for particulate emissions under 202(a) authority.

Subsection (b) is a departure from existing methods for prescribing emission standards for moving sources of pollution. In 1964, the Senate Committee on Public Works considered legislation which would have established, in Federal law, the standards of emission performance then applicable to vehicles to be sold in California. The automobile industry argued that writing standards into Federal law would not be appropriate because California's problem of automotive air pollution was unique and that different degrees of control for different pollutants would be needed to deal with problems in other areas of the nation.

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The 1965 Clean Air Act Amendments provided the Secretary with the maximum flexibility to meet potentially differing needs, but the 1965 statute clearly indicated that the Secretary's standards should be based on the needs of the worst area of the Nation —not the average—and that technology should be pressed as rapidly as possible to overcome the extended time lapse between application of emission controls and replacement of the entire vehicle population.

Since enactment of the Air Quality Act of 1967, the accelerated pace of air quality criteria development, evidence on the principal pollution problem areas and the principal pollutants has been published.

Those criteria documents indicate that the health levels of pollution agents associated with vehicle emissions were exceeded

substantially in many major cities. Information provided the Committee by the Administration indicated that, under the existing new vehicle emission control program (and without regard to the steps which would be taken pursuant to Title I of this Act) it would be 1990 before ambient levels of motor vehicle related pollutants would be brought down to the level necessary to protect the health of persons. This conclusion is based on the following data:

A. The ambient standard necessary to protect the public health from carbon monoxide is 8–10 parts per million (ppm). This compares with ambient air in Chicago measured at 44 ppm. The 1970 Federal emission standard for automobiles for carbon monoxide is 23 grams per mile (existing test procedure). To achieve the public health ambient standard would require emission controls placed on automobiles permitting emissions of only 5 grams per mile, a figure which represents the 1980 emission requirement as proposed by the Administration. To achieve sufficient replacement of automobiles with autos having the emission controls meeting 1980 standards will take an estimated ten years.

B. The ambient air health standard for photochemical oxidants (hydrocarbons) is 0.06 ppm. To achieve such ambient standard would require a reduction of hydrocarbon emissions from automobiles from the 1970 standard of 2.2 gm/mile to an emission level of 0.2 gm/mile. This last figure is the approximate equivalent of the proposed 1980 emission standard.

C. The ambient health standard for nitrogen oxides is anticipated to be about 0.10 ppm. This compares with an ambient condition found in most metropolitan areas of 0.50 to 0.60 ppm. To achieve the health standard would require a reduction from the proposed 1973 emission standard of 2.0 grams per mile to an emissions requirement for automobiles of 0.45 gram per mile, or approximately the proposed 1980 standards.

The following summary document provided by the National Air Pollution Control Administration indicates the degree of reduction of emission that would be necessary to meet health standards.

DERIVATION OF 1980 MOTOR VEHICLE EMISSION GOALS

The National Air Pollution Control Administration has estimated that new motor vehicles must achieve a minimum

reduction of emissions from a no-control baseline (pre-1968 models) of the following orders of magnitude to insure attainment of health-related air quality levels:

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	Percent
Carbon monoxide	92.5
Nitrogen oxides	93.6
Hydrocarbons	99.0

The derivation of these emission goals was explained in detail in a paper presented in June 1970 at the annual meeteng of the Air Pollution Control Association (D. S. Barth et al., Federal Motor Vehicle Emission Goals for Carbon Monoxide, Hydrocarbons, and Nitrogen Oxides based on Desired Air Quality Levels).

This statement presents a simpler explanation of the derivation of the above motor vehicle emission-reduction goals.

Based on data contained in air quality criteria documents already issued (for carbon monoxide and photochemical oxidants) or in preparation (for nitrogen oxides) and on requirements for margins of safety, it has been concluded that the following ambient air quality levels must be attained to insure protection of public health:

Carbon monoxide, 9 ppm/8-hour average.

Photochemical oxidants, 0.06 ppm/1-hour average.

Nitrogen dioxide, 0.10 ppm/1-hour average.

The motor vehicle emission reductions needed to insure attainment of the above ambient air quality levels are a function of existing ambient air levels of carbon monoxide, oxidant precursors (hydrocarbons and nitrogen oxides), the relationship between oxidant precursor levels and oxidants, and anticipated growth in motor vehicle emissions (resulting from increases in the numbers and use of motor vehicles).

Motor vehicle emission standards must permit attainment of the health-related air quality levels throughout the Nation. The highest levels of carbon monoxide, hydrocarbons, and nitrogen oxides currently measured are as follows:

Maximum Ambient Air Levels Related to Direct Health Effects

Carbon monoxide: 44 parts per million/8-hour average, Chicago.

Nitrogen dioxide: 0.69 parts per million/1-hour average, Los Angeles.

Maximum Ambient Air Levels of Oxidant Precursors

Hydrocarbons: 5.3 parts per million/6 to 9 a.m. average, Los Angeles.

Nitrogen dioxide: 0.62 parts per million/6 to 9 a.m. average, Los Angeles.

(These hydrocarbon and nitrogen dioxide measurements are associated with Los Angeles peak values for oxidants.)

The strategy employed to calculate needed reductions in hydrocarbon and nitrogen oxides emissions was as follows: A sufficient reduction in nitrogen oxides emissions to insure

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attainment of the health-related nitrogen oxides ambient air level; then, assuming attainment of the health-related nitrogen oxides level, a sufficient reduction in hydrocarbon emissions to insure attainment of the health-related photochemical oxidant level.

Based on these considerations, equations calculating needed reductions of carbon monoxide, hydrocarbon, and nitrogen oxides emissions were developed. The equations make allowances for anticipated growth in emissions and for natural background levels. The calculations produced the required percent reductions. These reductions assume that all stationary sources which contribute to the presence of carbon monoxide, hydrocarbons, and nitrogen dioxides in the ambient air could be reduced by a like percent.

Given a ten-year car life, the health related air quality levels could be attained in 1990 if all new cars produced after 1980 achieved the calculated emission-reduction goals. An earlier target date for meeting the emission-reduction goals would permit earlier attainment of the indicated air quality levels.

NAPCA's advanced power systems research and development program, as currently planned, is structured to produce, by 1975, two second-generation prototypes capable of meeting the 1980 emission-reduction goals.

Battelle Memorial Institute has estimated that well-designed, unconventional power plants could meet the following emission limitations:

Type	HC [1]	CO [1]	NO [2]
Natural gas-piston	1.2	3.0	0.6
Steam (rankine)	.1	.4	.3
280-hp gas turbine-regenerating	.4	.3	.8
Stirling	.04	.2	3.0
Hybrid turbine	.04	.3	.8

[1] Grants based on 1970 7-model cycle.
Note: Symbols=HC (hydrocarbons), CO (carbon monoxide), and NO² (nitrogen dioxide).

On the basis of information and hearings in 1964, 1965, 1967, and 1970, the committee concluded that 1975 would be the earliest possible date for application of the proposed standards.

This decision was based on recognition that technology may not be available to meet these standards within the next year and that the regular lead time which, in 1964, the industry indicated would be two years, should be supplemented by an additional period for the development of the control technology required to meet these standards.

The Committee recognized that even the lead time provided might not be adequate to tool up both technologically and mechanically for the standard, and therefore adopted an amendment offered by Senator Cooper providing a procedure whereby the deadline of model year 1975 or January 1, 1975 (the Committee recognizes that model years often begin in September of the preceding year) could be extended for one year only if after a hearing the Secretary determined that technology was not available, or had not been available to the appli-

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cant for a sufficient period of time, that the applicant had made a bona fide effort to meet the deadline, and that an extension was necessary for the general welfare of the United States.

The Secretary would have a responsibility to determine whether a one-year extension would be necessary. The burden of proof would be on the industry but the Secretary must use the results of his research, his investigations and his studies, as well as any additional information he may wish to subpoena from the industry, to assure that the technology not only is not available, but could not have been made available in time to meet the deadline. Whether or not the Secretary should determine to suspend the deadline, his decision would be subject to judicial review in the United States Court of Appeals for the District of Columbia through a procedure set forth. The Court in reviewing the Secre-

tary's decision can affirm or reverse only after independently finding that a suspension is essential to the public interest and general welfare of the United States; that all good faith efforts have been made by the applicant; and that the applicant has established that the technology, processes or other alternatives have not been available for a period of time necessary to achieve compliance. The industry could challenge his decision not to extend and other interested parties could challenge his decision to extend the deadline. In any event such a challenge would not delay the application of the statutory standard beyond January 1, 1976, and 1975 model vehicles would be required to meet any interim standards which the Secretary determined to be technologically practicable.

The Secretary's determination as to interim standards would be reviewable, but such review should not operate as a stay of those interim standards.

PROHIBITED ACTS—INJUCTION PROCEEDINGS—PENALTIES

Sections 203, 204, and 205 would be, for practicable purposes, repetition of existing law, with the changes necessary to reflect the extension of the Act to other moving sources of pollution and to increase the civil penalty from $1,000 to $10,000.

SECTION 206. CERTIFICATION AND PRODUCTION MODEL TESTING

Section 206 has been revised, at the request of the Administration, to provide the Secretary with authority to test representative samples of motor vehicles on the production line to assure that production line vehicles are meeting the same degree of emission controls for which prototypes were certified prior to production. The Committee interpreted the existing law as providing the Secretary the necessary authority to carry out this purpose. However, because the Secretary is of the opinion that he does not have authority to test production-line vehicles and revoke certification for failure to conform with specific standards the Committee at the request of the Secretary has elaborated the original intent of the Congress. If the Secretary should find that production line vehicles are not meeting the standard for which certified, the Secretary could revoke certification for any vehicles not delivered by the manufacturer and could withhold certification

for those vehicles until he was satisfied that compliance with the standard would be achieved.

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The Secretary's decision would be reviewable. An accelerated process of review would be provided in order to facilitate recertification and continue delivery of new vehicles.

SECTION 207. VEHICLE AND VEHICLE ENGINE COMPLIANCE TESTING

Section 207 would represent a significant departure from prior provisions for control of vehicle emissions. At the present time compliance with national emission standards for vehicles and engines is determined on the basis of whether the average of a class or model complies with the standard. Section 206 continues this procedure. Under section 206 prototype models would be certified as to compliance with standards and production-line sample-testing would be authorized to assure that the average of the models coming off the production line conforms to preproduction certification.

Under section 207, each production line vehicle would be required to comply with applicable emission standards. Each vehicle would be required to comply with standards for a 50,000-mile lifetime. The manufacturer would be required to warranty the performance of each individual vehicle as to compliance with emission standards. The dealer would not carry any obligation under this provision.

This section would provide two methods to determine whether or not individual cars will perform to the emission standard. First, the Secretary woud be provided with the authority to test representative samples of vehicles on the road and, if he found that a representative sample of a model or class fails to continue to comply with the standards within the 50,000-mile period, he could require the manufacturer to recall that model or class for the purpose of correcting any nonconformity.

The second compliance testing method would be triggered by the development of a quick test procedure. The Secretary would be required to develop a test which could be quickly and uniformly applied to individual vehicles on the production line and on the road to determine whether or not those vehicles comply or continue to comply with the standards for which they were certified. The quick test would have to be correlated with the pre-

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certification test procedure. It would have to be a test which could be applied in a reasonable period of time related to the normal time for a regular vehicle inspection. A quick test should avoid unnecessary slowdown of production lines, unnecessary consumer inconvenience, while providing a method to determine whether individual vehicles on the road are continuing to meet the standards for which they were certified.

The need to assure individual vehicle compliance became evident after sample-testing of vehicles on the road (both from California and nationally) revealed deterioration from conformance with the standard.

According to testimony of the National Air Pollution Control Administration:

> The more complete data confirm that slightly more than one-half of the cars tested failed to meet either the hydrocarbon or the carbon monoxide standard. For one model, more than 80 percent of the cars tested failed one or more tests. Due to the small number of cars, these emission data
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>
> were not extrapolated to 50,000 miles; however, on the basis of the California data one would expect that the emissions would tend to increase to some extent with increased mileage accumulations.

This bill would require the American people to make a substantially greater investment in motor vehicles to assure that air quality standards are implemented. This investment would be defensible only if the emission control systems continued to conform to standards for the lifetime of the vehicle. Substantial deterioration from the emission standard would mean that the manufacturer was not designing emission control systems which meet the intent of this legislation. It would mean that air quality standards in regions throughout the Nation would not be effectively maintained, and it would mean that potentially billions of dollars of consumer investment would be to no purpose.

The Committee has no reason to believe that emission controls would be inexpensive. The automobile industry has indicated that achievement of the 1975 standards set by the bill would be costly—whether such standards were achieved through cleaning up the internal combustion engine or through development of an alternative power source.

The manufacturers informed the Committee that they would not be able to guarantee conformity with emission standards for the anticipated 10-year life of a vehicle. The committee bill provides that 50,000 miles would be the maximum that a vehicle would be required to conform to the standards for which it was certified. The Committee bill would provide that a manufacturer may require reasonable evidence of proper maintenance of a vehicle and must provide written instructions on maintenance, adjustments, service and operation. The Committee hopes that, if the motorist complied with these instructions, emission controls would not deteriorate after 50,000 miles to the extent that ambient air quality would be impaired. The Committee further expects the manufacturer to endeavor to either improve the quality control of emission systems or explore better ways to assure continued compliance beyond 50,000 miles of use.

The warranty required by this section would not become effective until 90 days after enactment of this Act. This delay would be needed so that the manufacturer could prepare instructions for the motor vehicle purchaser. The Committee expects these instructions to be reasonable and uncomplicated. They would have to be approved by the Secretary. During such time as the warranty provision is effective, vehicles manufactured after that date would be required to comply with present standards. Vehicles manufactured in future years would have to be warranted to comply with such standards as may be applicable.

The Committee intends that the public should be made aware of the actual cost, not the manufacturer's price of any air pollution control equipment and warranty. While the Committee recognizes that separation of specific costs for air pollution control may be difficult, it is quite likely there would be a marked increase in cars in 1975. To the extent that such costs are attributed to the control of air pollution emissions the Committee intends that those increases be the actual cost of the air pollution systems involved.

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The Committee also recognizes the difficulty in any recall provision of notifying the owners of vehicles. The burden would be placed on the manufacturer to notify both the initial and subsequent purchasers of vehicles. The Committee expects that the manufacturer would not only depend on the files of the franchise

dealer, but would, to the extent practicable, use State motor vehicle department registration files to obtain the names and addresses of subsequent purchasers of cars. By establishing a 50,000 mile, no year lifetime for the purpose of warranty, the Committee did not intend to relieve the automobile manufacturers of their responsibility to notify owners of older cars. The 50,000-mile period can be assumed to be 4 to 5 years and the manufacturer should be expected to notify any owner of a vehicle that is five years old or less as to failure to continue to perform to the standard. A decision not to require the manufacturer to repair the vehicle could be made after notice and after finding that the vehicle had exceeded the 50,000-mile warranty period.

SECTION 208. STATE GRANTS

Section 208 of the proposed bill is similar to section 209 of existing law except that under the new section 208 grants for the development of vehicle emission devices and systems and inspection and testing programs could be made to agencies other than air pollution control agencies. A limitation in existing law hindered making such grants to agencies in charge of general motor vehicle inspection programs, the logical agencies (in most cases) to perform emission inspections.

The Committee expects the Secretary to assist in training inspectors as soon as methods required by section 207 are developed to test individual vehicles. Effective State emission testing and inspection programs will be essential to effective implementation of ambient air quality standards and to assurances that vehicles, once delivered to the ultimate and subsequent purchasers, continue to conform to the standards for which they were certified.

Funds made available under this program should supplement existing funding programs for air pollution control and should not be limited by the maintenance-of-effort provisions of Section 105.

SECTION 209. RECORDS AND REPORTS

Section 209 of the Committee bill is substantially similar to section 207 of existing law except the trade secrets protection language would be modified to place the burden of showing the need for confidentiality on the person filing the report with the Secretary.

The Committee believes that requiring the person filing records

and reports to prove the need for proprietary protection would avoid abuse of section 1905 of title 18 of the United States Code and facilitate the availability of information related to air pollution to the public. In addition the Committee bill would exempt emission data from proprietary protection. The Committee believes public knowledge of emissions overrides the private interest in proprietary information.

The purpose of 18 U.S. Code 1905 is to prevent the unauthorized disclosure by Federal employees of data obtained in connection with any authorized Federal activity which would, if divulged, reveal trade secrets or secret processes. It is not aimed at preventing the disclosure

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of such data by Federal agency officials as part of their duty to effectively control and prevent air pollution. Moreover, the Committee believes that it is not in the public interest for data relating to the quantity and quality of the emissions to be considered confidential. The public has a right to know who is polluting the atmosphere and in what amounts.

SECTION 210. STATE STANDARDS

This section would create a Federal preemption in order to prevent a multiplicity of State standards for emissions control systems on new motor vehicles as required by section 202, or the regulation of fuels as provided in section 212. This preemption would extend to all new vehicles, commercial vehicles, airplanes, and vessels.

The Committee nevertheless recognized that there may be unusual instances when the State would have to require a standard of emission control for a vehicle that would exceed the controls provided by this legislation.

The proposed legislation would continue the requirements that the Secretary waive application of this preemption provision for any State which adopted emission control standards on new vehicles prior to March 30, 1966. The only State to apply such controls is California.

For any other State to obtain an exception to preemption, it would have to prove to the satisfaction of the Secretary that a more stringent standard was necessary and essential to the

achievement of ambient air quality standards in regions within its jurisdiction.

It should be noted that the Committee anticipates that the need for such a variance would, with the exception of California, be useful primarily for the control of emissions from commercial vehicles.

In addition, the Committee bill would provide, without exception, for Federal preemption over the prohibition or control of the sale and use of fuels registered pursuant to section 212.

Nothing in this section would infringe the ability of a State or community to regulate the use of any vehicle once it has been purchased.

SECTION 211. USED VEHICLES

The Committee recognizes that for some years to come used vehicles (including cars manufactured prior to the 1975 model year) will be a major source of automotive emissions. The Committee could not find an effective way to assure control of these used vehicles, many of which are totally uncontrolled and others of which are only partially controlled by Federal standards effective in 1968 and subsequent years.

The Committee decided that it is necessary to develop emission control devices which could be retrofitted for these vehicles. Such used car control devices and systems would be submitted to the Secretary for certification as to compliance with used vehicle emission standards which he would promulgate. Once such devices had been certified, States with difficult problems could examine the value of requiring used vehicles operating within that State or region to install such devices or systems. This may be an effective tool for assuring continued compliance with air quality standards, especially since the automobile industry cannot guarantee new vehicle performance beyond 50,000 miles.

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As was pointed out in the hearings, one of the difficulties in the control of used vehicles is the way in which the car is maintained. The Committee expects that those regions with difficult pollution problems associated with motor vehicle emissions will include in implementation plans a procedure to assure that a major tune-up will take place when a motor vehicle changes hands. This alone will greatly reduce the impact of the used car on air quality.

In certifying devices under this section, the Secretary would have to consider both the technological practicality of the used car device, as well as the economic cost. In many instances the used vehicle to which a device would be added would be very low in value.

SECTION 212. REGULATION OF FUELS

Air pollution is a byproduct of the combustion of fuel. The Committee therefore considers it appropriate to expand the existing authority requiring registration of fuels and to establish a procedure for regulating the sale of fuels to the extent that the combustion or evaporation of such fuels may adversely affect implementation of the Act.

Under the procedure that would be established by the Committee bill, the Secretary could designate any fuel that is used for vehicles. Once designated, the fuel would have to be registered by the Secretary prior to sale. If such fuel had not been registered by a date established by the Secretary, the fuel could not be introduced into commerce. Violation of this provision would subject the fuel manufacturer to a fine of $10,000 per day.

The bill would authorize a system under which the Secretary shall seek and receive information to assist him in determining the potential effect of a particular fuel on the public health and welfare or on operation of an emission control device.

The manufacturer of a designated fuel would have to notify the Secretary of a fuel's commercially identifiable name, the manufacturer of any additives used in the fuel, the purpose of such additive, and the concentrations of such additives.

While additives themselves would not be controlled directly by this provision, the manufacturer of fuel additives would have to provide the Secretary, on request, with information on the chemical composition of the additive, analytical techniques needed to detect its presence, the recommended concentrations of such additive, and the recommended use of the additive.

To establish a system to facilitate expeditious registration of fuels, the Secretary would be required to prepare a system of test procedures and protocols that any fuel manufacturer could expect to undertake prior to registration. It is the Committee's belief that such procedures would assist the Secretary in identifying any health or welfare effects in the use of the fuel.

Should these procedures be ineffective, the Secretary could

request added information from the manufacturer on the effects of emissions and evaporation of the fuel.

Once the manufacturer had satisfied these requirements, the Secretary would be required to register the fuel for sale.

The Committee bill also would provide a procedure under which the Secretary might either prohibit or control the sale of a fuel.

There are two basic reasons to regulate the sale of a fuel. First, the combustion or evaporation of such fuel from any engine may produce

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an emission that is a direct endangerment to the public health. Second, the fuel may have an adverse effect on the general welfare or on an emission control system or device.

In matters related to public health and welfare, the Committee's concern is with the effect of the actual emissions from the tailpipe, not with the composition of the fuel. The combustion of the fuel in its intended environment—inside an engine with proper emission controls—would be the proper criterion for the Secretary to use in judging the health and welfare effects of that fuel.

The Committee believes that an endangerment to health would be of such importance that the Secretary might prohibit or control the sale of such fuel. Adverse environmental effects would fall in the category of general welfare. Since the nature of the general welfare is less well-defined than the public health, the Committee believes it essential that the Secretary hold a public hearing on any proposed prohibition or control relating to public welfare.

Another reason for prohibiting or controlling the sale of a fuel involves its effect on an emission control device or system. The most obvious example that came to light in hearings is the effect of leaded gasoline on a catalytic muffler. Such mufflers have been proposed to control emissions of hydrocarbons and carbon monoxide from vehicle engines. The effect of lead on catalysts can reduce the effectiveness of such mufflers by up to 90 percent. Since the use of catalytic mufflers may be essential for compliance with standards established under section 202, the Committee has adopted language permitting the Secretary to control fuels in order to facilitate the use of emission control systems.

The Committee believes that automotive and petroleum industries should be given the greatest possible latitude in develop-

ing an effective low emission technology. Therefore, before the Secretary made any decision to prohibit or limit the use of a fuel to facilitate emission control, he would be required to hold public hearings and make and publish a finding that such a prohibition is necessary. The Secretary would have to find that such a prohibition or control on fuels benefits the public either by enabling use of a more effective emission control system than would otherwise be available, or by providing a less costly emission control system if two systems of equal effectiveness are developed. The cost would be determined by comparing systems and fuel costs over 50,000 miles of vehicle use. In addition, the Secretary would have to find that such a prohibition or control would not cause the use of any other fuel(s) that would produce emissions endangering the public health or welfare to the same or a greater degree.

The Committee anticipates that the Secretary may not deem it necessary to prohibit altogether the sale of a particular fuel to facilitate the operation of emission control systems. He may wish instead to limit use of such fuels or place limits on additive concentrations in the fuel.

At one time the Committee considered language that would give the Secretary only the authority to "prohibit" a fuel's introduction into commerce. After evaluation, the Committee decided that such authority should also be extended to the "control" of a fuel's introduction into commerce. This authority to "control" the use of fuels is intended to give the Secretary greater flexibility than the authority to "prohibit." For instance, the Committee expects that the

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Secretary may find it advisable to permit the continued sale of leaded gasolines to allow for the efficient and economic operation of automobiles presently on the highway, even if he finds it necessary to control fuels to assure the availability of non-leaded gasolines for other purposes.

The purpose of this provision would be to achieve maximum control of auto emissions at a minimum cost.

This section would also empower the Secretary to subpoena relevant witnesses and records, and would require that manufacturers make available any data not considered confidential.

SECTION 213. DEVELOPMENT OF LOW EMISSION VEHICLES

Section 213 would authorize the Secretary to establish special low emission vehicle standards for research and development purposes. This provision is designed to coincide with legislation enacted by the Senate earlier this year sponsored by Senator Magnuson. Senator Magnuson's bill, S. 3072, would stimulate the development, production and distribution in interstate commerce of low-emission motor vehicles.

Authority for the Secretary to prescribe low emission standards and certify vehicles and engines which meet those standards is essential to effective implementation of S. 3072. More importantly, this provision would provide the Secretary with additional information needed to determine, as required by Section 202(b), whether or not technology is available to meet the standards prescribed by that section.

SECTION 214. DEFINITIONS

The definitions are self-explanatory. Additional definitions have been added to include those moving sources of pollution which would be added by this amendment to the Clean Air Act.

SECTION 215. APPLICABILITY

This section would provide that certain specific provisions of this Title should be applicable 90 days after enactment in order to provide the manufacturer with the time necessary to develop and implement the provisions of the bill.

SECTION 303. EMERGENCY POWERS

The bill would continue emergency powers contained in section 108(k) of existing law to deal with imminent and substantial endangerment to public health. However, to reflect the new organization of the bill and to make clear the intent that such powers apply to the entire Act, the authority would be provided in title III. In addition, the language has been modified to conform to the description of air pollution agents or combination of such agents which now appears throughout the Act.

The Committee believes that this emergency authority is necessary to provide for immediate, effective action whenever air pollution agents reach levels of concentration that are associated with

(1) the production of significant health effects, (2) incapacitating body damage, or (3) irreversible body damage in any significant portion of the general population. The term "significant portion"

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is not intended to exclude sensitive elements of society such as asthmatics, but only those groups of particularly susceptible persons for whom other precautionary measures should be taken. Secondly, the emergency situation exists whenever there is any perceptible increase in the mortality rate.

It is understood that the Secretary has prepared contingency plans and procedures to implement this authority which include a system of alerts. The Committee recognizes the importance of such contingency planning in section 111 of the bill, and would require such contingency planning as a part of the implementation plan for every air quality control region.

The levels of concentration of air pollution agents or combinations of agents which substantially endanger health are levels which should never be reached in any community. When the prediction can reasonably be made that such elevated levels could be reached even for a short period of time—that is that they are imminent—an emergency action plan should be implemented to reduce emissions of air pollution agents and prevent the occurrence of substantial endangerment.

During the consideration of this legislation, metropolitan regions on the eastern seaboard experienced a severe air pollution episode which suggested the use of 108(k) authority under existing law. In answer to an inquiry as to the actions taken during the episode, the Secretary reported to the Committee that a combination of the pollutant levels experienced and the generally responsible actions of State and local officials made action under subsection 108(k) unnecessary. The Committee is not satisfied with existing State and local air pollution alert strategies. Recommendations that children not run to and from school and that events be suspended are not a substitute for reducing pollution. The Committee believes that air pollution alerts authority should include plans which provide for the immediate reduction of nonessential operations which contribute to an episode situation.

The Committee expects the Department to continue to refine emergency procedures under section 303 of this bill and to assist the States and municipalities in the development and execution of such procedures.

SECTION 304. CITIZEN SUITS

The Committee has established a provision in the bill that would provide citizen participation in the enforcement of standards and regulations established under this Act. The provision in the proposed bill is carefully restricted to actions where violations of standards and regulations or a failure on the part of officials to act are alleged.

Section 304 would not substitute a "common law" or court-developed definition of air quality. An alleged violation of an emission control standard, emission requirement, or a provision in an implementation plan, would not require reanalysis of technological or other considerations at the enforcement stage. These matters would have been settled in the administrative procedure leading to an implementation plan or emission control provision. Therefore, an objective evidentiary standard would have to be met by the citizen who brings an action under this section.

Government initiative in seeking enforcement under the Clean Air Act has been restrained. Authorizing citizens to bring suits for viola-

tions of standards should motivate governmental agencies charged with the responsibility to bring enforcement and abatement proceedings.

In order to further encourage and provide for agency enforcement, the Committee has added a requirement that prior to filing a petition with the court, a citizen or group of citizens would first have to serve notice of intent to file such action on the Federal and State air pollution control agency and the alleged polluter. Each citizen or group would have to include facts in such notice in accordance with regulations prescribed by the Secretary. The Secretary should prescribe such regulations as soon as possible after enactment, and such regulations should reflect simplicity, clarity, and standardized form. The regulations should not require notice that places impossible or unnecessary burdens on citizens but rather should be confined to requiring information necessary to give a clear indication of the citizens' intent. These regulations might require information regarding the identity and location of alleged polluter, a brief description of the activity alleged to be in violation, and the provision of law alleged to be violated.

The Committee has provided a period of time after notice before a citizen may file an action. The time between notice and filing of the action should give the administrative enforcement office an opportunity to act on the alleged violation.

It should be emphasized that if the agency had not initiated abatement proceedings following notice or if the citizen believed efforts initiated by the agency to be inadequate, the citizen might choose to file the action. In such case, the courts would be expected to consider the petition against the background of the agency action and could determine that such action would be adequate to justify suspension, dismissal, or consolidation of the citizen petition. On the other hand, if the court viewed the agency action as inadequate, it would have jurisdiction to consider the citizen action notwithstanding any pending agency action.

The Committee emphasizes that if the alleged violation is a failure to comply with an administrative enforcement order, a violation of a standard of performance, or a prohibition or emission standard, there would be no waiting period following notice. It is the Committee's intent that enforcement of these control provisions be immediate, that citizens should be unconstrained to bring these actions, and that the courts should not hesitate to consider them.

Section 304 would provide that a citizen enforcement action might be brought against an individual or a government agency. As recognized under section 118 of the bill, Federal facilities generate considerable air pollution. Since Federal agencies have been notoriously laggard in abating pollution and in requesting appropriations to develop control measures, it is important to provide that citizens can seek, through the courts, to expedite the government performance specifically directed under section 118.

The standards for which enforcement would be sought either under administrative enforcement or through citizen enforcement procedures are the same.

The participation of citizens in the courts seeking enforcement of air quality standards should not result in inconsistent policy. The Clean Air Act should achieve objective standards against which to

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measure air quality. There should be no inconsistency in the enforcement of such standards. Whether abatement were sought

by an agency or by a citizen, there would be a considerable record available to the courts in any enforcement proceeding resulting from the Federal and State administrative standard-setting procedures. Consequently, the factual basis for enforcement of standards would be available at the time enforcement is sought, and the issue before the courts would be a factual one of whether there had been compliance.

The information and other disclosure obligations required throughout the bill are important to the operation of this provision. The Secretary would have a special duty to make meaningful information on emitting sources available to the public on a timely basis.

The provision is drawn to avoid problems raised by class action provisions of the Federal rules of civil procedure, specifically by Rule 23. Section 304 does not authorize a "class action." Instead, it would authorize a private action by any citizen or citizens acting on their own behalf. Questions with respect to traditional "class" actions often involve: (1) identifying a group of people whose interests have been damaged; (2) identifying the amount of total damage to determine jurisdiction qualification; and (3) allocating any damages recovered. None of these points is appropriate in citizen suits seeking abatement of violations of air quality standards. There would be no jurisdictional amount required in section 304 nor is there any provision for the recovery of property or personal damages. It should be noted, however, that the section would specifically preserve any rights or remedies under any other law. Thus, if damages could be shown, other remedies would remain available. Compliance with standards under this Act would not be a defense to a common law action for pollution damages.

Concern was expressed that some lawyers would use section 304 to bring frivolous and harassing actions. The Committee has added a key element in providing that the courts may award costs of litigation including reasonable attorney and expert witness fees, whenever the court determines that such action is in the public interest. The court could thus award costs of litigation to defendants where the litigation was obviously frivolous or harassing. This should have the effect of discouraging abuse of this provision, while at the same time encouraging the quality of the actions that will be brought.

The courts should recognize that in bringing legitimate actions under this section citizens would be performing a public service

and in such instances the courts should award costs of litigation to such party. This should extend to plaintiffs in actions which result in successful abatement but do not reach a verdict. For instance, if as a result of a citizen proceeding and before a verdict is issued, a defendant abated a violation, the court may award litigation expenses borne by the plaintiffs in prosecuting such actions.

Enforcement of pollution regulations is not a technical matter beyond the competence of the courts. The citizen suit provision is consistent with principles underlying the Clean Air Act, that is the development of identifiable standards of air quality and control measures to implement such standards. Such standards provide manageable and precise benchmarks for enforcement.

The Committee bill would provide in the citizen suit provision that actions will lie against the Secretary for failure to exercise his duties

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under the Act, including his enforcement duties. The Committee expects that many citizen suits would be of this nature, since such suits would reduce the ultimate burden on the citizen of going forward with the entire action.

SECTION 305. APPEARANCE

The Committee recognizes that this legislation would put greatly increased burdens on the administering agency. Constant legal assistance would be required in legislative interpretation, administrative procedure, review of implementation plans, information acquisition, and enforcement. The Secretary would need a staff of supporting attorneys. Good administration dictates that such assistance be immediately available to the Secretary.

Therefore, the bill would authorize the Secretary to appoint attorneys to appear and to represent him in actions instituted under the Clean Air Act. The Committee believes this necessary for three reasons. First, the timetables imposed by the bill would require that full time legal assistance be available to assure compliance. Second, new enforcement procedures would require the development of competence and expertise if the Act were to be administered and enforced fairly and expeditiously. Finally, failure to comply with enforcement within the time required would

necessitate immediate action in Federal District Courts to seek compliance with such order.

SECTION 306. FEDERAL PROCUREMENT

The Committee considered proposals offered by Senator Muskie and by Senator Cook to assure that the Federal Government does not patronize or subsidize polluters through its procurement practices and policies.

Section 306 would make any person or corporation who fails to comply with a court order issued under this Act or who is convicted of a knowing violation of any schedule or timetable of compliance, emission requirement, prohibition, emission standard, or standard of performance, ineligible for a Federal contract for any work to be done at the polluting facility. This ineligibility would continue until the Secretary certifies that the facility is in compliance with the court order or the provisions of the Act.

This section would be limited, whenever feasible and reasonable, to contracts affecting only the facility not in compliance, rather than an entire corporate entity or operating division.

There might be cases where a plant could not participate in a Federal contract due to a violation but another plant owned by the same company might bid and transfer work to the first plant. This type of action would circumvent the intent of this provision. In this case, the company's second facility should also be barred from bidding until the first plant returns to compliance.

There would also be instances where a second plant within a corporation was seeking a contract unrelated to the violation at the first plant. In such a case, the unrelated facility should be permitted to bid and receive Federal contracts.

It is anticipated by the Committee that the Executive Branch will, in the near future, publish new Federal contract guidelines that will

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enable the Federal Government to suspend or revoke a contract once the contracting party is found to be in non-compliance with the air pollution standards or other requirements of this Act. This executive action would be specifically mandated by section 306(c).

The effectiveness of this section would depend on fast, accurate dissemination of information. All Federal agencies would have to

be rapidly apprised of any abatement order or conviction which would bar a facility from eligibility for Federal contracts. The Secretary would also have to act expeditiously to certify that a facility had achieved compliance, and notify all Federal agencies of that fact. Delays in reporting such information, leading to inaccurate public disclosures, would quickly render this section unworkable.

SECTION 307. EMPLOYEE PROTECTION

Every worker who is called upon to testify or who gives information with respect to an alleged violation of a pollution law by his employer or who files or institutes any proceeding to enforce a pollution law against an employer fears that he will be subject to discrimination. Congress has recognized this problem in the field of labor relations and has prohibited such discrimination in the National Labor Management Relations Act.

Section 307 of the bill is patterned after that Act and a similar provision in Public Law 91–173 relating to the health and safety of the Nation's coal miners. Under this section employees and union officials could help assure that employers do not contribute to the degradation of our environment.

The section would prohibit discharges or discrimination and would provide an administrative procedure under which the employee or his representative could seek redress for any violation of this prohibition. The Secretary of Labor would have to investigate such charges and issue findings and a decision which would be subject to judicial review. If the Secretary should find a violation, he would have to issue orders to abate it, including, where appropriate, the rehiring of the employee to his former position with back pay. Also, the person committing the violation could be assessed the costs incurred by the employee to obtain redress.

This provision would safeguard the rights of employees, but it should not encourage employees to frivolously allege violations since the employee would have to pay the costs of the proceedings unless the violation is proved.

SECTION 308. JUDICIAL REVIEW

One of the uncertainties in the existing Clean Air Act is the availability or opportunity for judicial review of administratively developed and promulgated standards and regulations. Moreover, the effect on the general program of a review itself is not clear.

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Administratively developed standards, rules and regulations under the Act and under this bill would clearly affect the interests of persons. The courts are increasingly adapting this test to what administrative actions are reviewable. In several recent cases [*Environmental Defense Fund, Inc.* v. *Hardin* (C.A. No. 23,813, May 28, 1970); *Barlow* v. *Collins* (397 U.S. 159, 167 (1970)); *Abbott Laboratories* v. *Gardiner* (387 U.S. 136, 140–41 (1967))] the Courts have held that even in

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matters committed by statute to administrative discretion, preclusion of judicial review "is not lightly to be inferred . . . it requires a showing of clear evidence of legislative intent." (*E.D.F.* v. *Hardin*, supra, p. 7.) The courts have granted this review to those being regulated and to those who seek "to protect the public interest in the proper administration of a regulatory system enacted for their benefit." (*E.D.F.* v. *Hardin*, supra, p. 6.) Since precluding review does not appear to be warranted or desirable, the bill would specifically provide for such review within controlled time periods. Of course, the person regulated would not be precluded from seeking such review at the time of enforcement insofar as the subject matter applies to him alone.

Because many of these administrative actions are national in scope and require even and consistent national application, the provision specifies that any review of such actions shall be in the United States Court of Appeals for the District of Columbia. For review of the approval of promulgation of implementation plans which run only to one air quality control region, the section places jurisdiction in the U.S. Court of Appeals for the circuit in which the affected air quality control region, or portion thereof, is located.

In order to maintain the integrity of the time sequences provided throughout the Act, the bill would provide that any review sought must be filed within 30 days of the date of the challenged promulgation or approval. It would be further provided that the filing of a petition does not operate as a stay of the application of the promulgation or decision for which review is sought, unless the party seeking such review is able to demonstrate to the court that there is a substantial likelihood that such party will prevail on the merits and that the interests of the public will not be harmed by such stay. It should be noted that the provision restricting stays would apply not only to actions brought pursuant

to this section, but also to any review of an administrative action pursuant to this Act or under any provision of law.

In this section, and in two other provisions of the bill, section 115 and section 202(b)(4) the Committee directs any court reviewing any administrative promulgation or decision to presume that the findings of the Administrator related to the matter subject to review are correct. In adopting this position offered by Senator Baker, the Committee proposes to clarify for purposes of this Act the value, or weight, given to administrative findings and decisions by the reviewing court.

The Committee does not intend by this language to provide a statutory provision that establishes administrative promulgations or decisions as conclusive and thereby effectively extinguishing the right of review. Rather, the presumption of correctness established is rebuttable by proof that the administrative promulgation or decision is not supported by a preponderance of its evidence. It should also be noted that evidence regarding any exclusion or emission of relevant material from the administrative record may be adduced to challenge the sufficiency of the administrative record.

The committee recognizes that it would not be in the public interest to measure for all time the adequacy of a promulgation of any standard or regulation by the information available at the time of such promulgation. In the area of protection of public health and environmental quality, it is clear that new information will be developed and that such information may dictate a revision or modifica-

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tion of any promulgated standard or regulation established under the act. The judicial review section, therefore, provides that any person may challenge any promulgated standard, regulation, or approved or promulgated implementation plan after the date of promulgation whenever it is alleged that significant new information has become available.

New information may become available at some future date which indicates that a particular pollution agent or combination of agents is hazardous to the health of persons and therefore should be added to those pollution agents subject to the provisions

of section 115. Conversely, new information may become available indicating that a pollution agent for which a prohibition had been established under section 115 is not hazardous to the health of persons. If the Secretary failed to act in either event, the promulgation could be challenged.

SECTION 309. MANDATORY LICENSING

The scope of the Clean Air Act Amendments contained in the bill, as reported, would require the development of new devices, techniques, and procedures to meet the obligations placed on those persons whose activities result in the emission of air pollution agents. In particular are the stringent demands which would be made on industry in implementing the standards of performance required of new stationary sources under section 113, the emission control and prohibition requirements for hazardous substances under section 115, and the automobile and other moving source emission controls required by section 202. Only the stringency of these sections justifies the inclusion of the provisions of section 309 in the bill.

The Committee recognizes that there is a great discrepancy in the technical capabilities of the various producing entities in any given industry and that many companies are not large enough or broadly based enough to have their own research facilities to develop the needed controls. In order to prevent the Clean Air Act requirements from creating competitive disadvantages which well might result in increased concentration of control of production facilities in the hands of a few large companies, the Committee has established the framework in section 309.

The procedure for mandatory licensing established by this section would make available to any party who can show a need to know to have access to any patents, trade secrets, or know-how necessary to achieve compliance with Sections 113, 115, and 202 of this Act.

The language in no way is designed to give large manufacturers production rights to the inventions, trade secrets, or discoveries of others. The purpose is to guarantee to all producers in a given field an adequate supply of technology with which to meet the

statutory obligations which would be imposed by the bill as reported.

Section 309 has been carefully drawn to clearly indicate that the Secretary would only provide access to patents, trade secrets or know-how when such devices, technology or procedures are not otherwise available to parties requesting assistance. The intent of section 309 is to prohibit anyone from refusing to make available discoveries or inventions which would assist in the control and abatement of air pollution.

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The proposed bill does not provide specifically that any proprietary information made available to the licensee be used solely in connection with the licensed use, but it should be understood that any license granted in accordance with the Secretary's order under the provisions of this section would contain reasonable provisions to prevent the use by the licensee of any such know-how or trade secrets for any purpose other than to carry out the purposes of the Secretary's order.

In actual operation, this provision would enable the Secretary to require any patent, trade secret, or know-how to be made available to any person who must have access to such patent, trade secret, or know-how in order to comply with the provisions of the Act. The bill would provide that a reasonable royalty must be paid by the recipient to the owner of such patent, trade secret, or know-how, and, in the event of a dispute over the character of the royalty, such dispute would be resolved in accordance with the procedures of the American Arbitration Association.

The Committee expects that the Secretary in carrying out his duties under this section would exercise the greatest amount of care so as not to abuse either property rights or in any way encourage restraint of trade. Consequently, the Committee expects that the Secretary will draw upon, and frequently consult with, the anti-trust division of the Department of Justice as he carries out his responsibilities under this section.

The Committee has received many representations from many companies that they would otherwise be unable to comply with the provisions of the Act because of the lack of technological capabil-

ity. It should be emphasized that the Committee intends that the authority contained in this section should be exercised very carefully and very strictly by the Secretary. The Committee further expects that the Secretary will develop procedures and regulations for obtaining information and for applying for the benefits of this section and for the evidentiary requirements before the Secretary will require that such patent, trade secret, or know-how will be made available to the applying person.

SECTION 310. POLICY REVIEW

Early this year the President signed P.L. 90–190, the National Environmental Policy Act. One of the important provisions of that Act is section 102(c), requiring every agency of the Federal Government to evaluate carefully the environmental impact of proposed activities. The Environmental Policy Act requires that all relevant factors relating to the environmental effects of proposed activities be included in a "detailed statement" which follows the proposed activity through the administrative and legislative process. Although the "detailed statement" may be reviewed by the Council on Environmental Quality, the Act does not assure that Federal environmental agencies will effectively participate in the decision-making process. It is essential that mission-oriented Federal agencies have access to environmental expertise in order to give adequate consideration to environmental factors.

In order to remedy this situation, the Committee bill would require that any detailed statement which contains any matter related to duties and responsibilities granted to the Secretary pursuant to the Clean Air Act and the Noise Pollution and Abatement Act be reviewed

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by the Secretary for his analysis of the statement with respect to public health and welfare and environmental quality. If the Secretary should determine that a detailed statement is inadequate, he would refer the matter to the Council on Environmental Quality for a determination and recommendation to the President. The Council's determination and recommendation would be made public.

Mission-oriented agencies often lack the expertise to give adequate evaluation to the environmental impact of their own activities. The Committee bill would therefore require that the activities or proposed regulations of any agency or department of the Federal Government be reviewed by the Secretary for analysis of those matters within the scope of authority pursuant to the Clean Air Act and the Noise Pollution and Abatement Act of 1970.

The Committee intends that these procedures be expeditious and not become an obstruction of the flow of proposals and activities in the Federal Government.

SECTION 317. AUTHORIZATION OF APPROPRIATIONS

In developing the figures included in section 317 providing for authorizations of appropriations for the next three years to implement the bill as reported, the Committee considered experience with the Air Quality Act of 1967 and further consulted with the Administration for estimates of resources needed to implement the proposed amendments.

Appropriations for the 1967 Act have been approximately one-half the amount authorized. This lack of funding has lessened the effectiveness of the Air Quality Act. The authorization for fiscal year 1969 was $185 million, the amount appropriated was $88.7 million. For fiscal year 1970 the amount authorized was $179.3 million, and $108.8 million was appropriated. The bill reported from Committee would provide an authorization of $275 million for fiscal year 1971—the budget request is for $106 million.

This pattern cannot continue if the Congress and the Federal Government are to retain credibility with the American people. The authorization figures contained in the bill represent the best estimate of the Committee in consultation with the Administration, of what will be required to implement its provisions.

The following table is an estimate developed by the Administration referring only to resources necessary to implement the proposed amendments and excludes authorizations necessary to implement the research authority contained in section 104.

ESTIMATE OF RESOURCES NEEDED TO IMPLEMENT PROPOSED AMENDMENTS [1] TO CLEAN AIR ACT AS CONTAINED IN SENATE BILL

[Dollars in thousands]

	Fiscal year 1971		Fiscal year 1972		Fiscal year 1973	
	Position	Amount	Position	Amount	Position	Amount
Air quality monitoring	85	$3,700	205	$3,750	205	$3,750
Production car testing	30	1,070	80	3,330	100	3,900
National emission standards	107	2,210	130	3,300	130	3,300
Fuels/fuel additives regulation	20	980	30	1,100	30	1,100
Control program assistance:						
(1) Technical assistance	254	6,100	402	11,170	410	11,415
(2) Control program grants	26	12,900	12	6,300	16	8,000
(3) State vehicle inspection grants	2	2,500	29	32,500	50	75,000
Mobile source standards	7	655	11	660	12	240
Used vehicles	16	1,275	16	1,800	19	1,800
Instrumentation	4	1,200	20	5,800	20	5,800
Fuels conversion	1	500	2	1,000	10	10,000
Vehicle R/D	3	750	3	750	3	1,000
Federal facilities and procurement	15	500	35	1,200	50	1,700
Subtotal [1]	570	34,340	975	72,660	1,055	127,005
Forward planning estimate; implement current legislation	1,141	112,018	1,450	160,500	1,755	186,100
Subtotal cost to implement new legislation	1,711	146,358	2,425	233,160	2,810	313,105
Effects research, sec. 107	30	3,000	110	5,000	120	7,000
Grand total	1,741	149,350	2,535	238,160	2,930	320,105

[1] Excludes sec. 107 effects research.

The Committee bill includes a provision amending section 301 of existing law to provide the Secretary with authority to procure personal services through contract without reference to the Civil Service laws and the Classification Act of 1949. This provision alone would not, without full funding of the authorizations contained in section 317, provide for adequate manpower. However, it would remove one serious obstacle.

In 1967 it was indicated that to fully implement the 1967 Act the National Air Pollution Control Administration would need 1,900 employees in fiscal year 1970. Actual employment at the beginning of fiscal year 1970 was 1,024, or 876 less than the stated need. By mid-fiscal year 1970 the National Air Pollution Control Administration's employment had fallen to 971, or 929 below the stated need.

In fiscal year 1968 NAPCA's employment was 1,070; in fiscal year 1969 employment was 1,065 (a decrease of 5), at the beginning of fiscal year 1970 the employment was 1,024 (a decrease of 46 from the 1968 level), and by mid-1970 employment had dropped to 971 employees (a decrease of 99 from the 1968 level).

The availability of manpower, with adequate funding, can provide effective implementation of this act. The committee expects that past trends will be reversed and that required manpower will be made available to implement the program.

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INDIVIDUAL VIEWS OF SENATOR ROBERT J. DOLE

On February 10, 1970, President Nixon, in the first Presidential message to Congress on the environment, proposed far-reaching legislative and administrative initiatives to restore and preserve our precious natural resources. The President pointed out that we have "too casually and too long abused our natural environment." He emphasized that "the time has come when we can wait no longer to repair the damages already done, and to establish new criteria to guide us in the future."

A major portion of the 37-point program proposed by the President was devoted to air pollution. He accurately described air as "* * * our most vital resource, and its pollution * * * as * * * our most serious environmental problem."

The bill reported from committee is in response to this challenge and is the result of bipartisan efforts by committee members and the executive branch. It contains elements of legislation introduced by Senator Muskie, chairman of the Subcommittee on Air and Water Pollution, as well as aspects of legislation introduced by Senator Scott, minority leader, on behalf of the administration. Specifically, the following Presidential administrative and legislative recommendations for control of air pollution are contained in the bill:

1. More stringent motor vehicle emission standards.

2. More effective procedures for insuring that motor vehicles meet the low pollution standards.

3. Authority to regulate fuels and fuel additives.

4. Financial support for research and development of unconventional pollution-free power sources.

5. National ambient air quality standards, with the States required to prepare implementation plans for meeting these standards.

6. Accelerated designation of interstate air quality control regions.

7. Establishment of national emission standards for pollutants which are extremely hazardous to health and for new facilities which could be major contributors to air pollution.

8. Extension of Federal authority to seek court actions against both interstate and intrastate air pollution.

9. Court authority to impose increased fines for violation of emission requirements.

While I am in substantial agreement with the bill as reported, I feel there are certain provisions which could be improved, and one in particular merits discussion. We have established the 1975 model year as the deadline for achieving a 90-percent reduction in automobile emissions from specified 1970 levels, The committee, recognizing that there might not be sufficient time for the industry to meet this standard, provided for a 1-year extension of the deadline by the Secretary, subject to judicial review. However, I believe a combination of

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administrative and congressional action would be more consistent with the intent of Congress; and, at the appropriate time, I intend to introduce an amendment in the form of a substitute for section 202(b)(4) to provide automobile manufacturers an opportunity to petition the Secretary for a 1-year extension of the 1975 deadline. If the Secretary, who possesses the expertise and fact-finding authority, finds the extension to be in the public interest, and also finds that all possible good faith efforts to meet the standards have been made, and the technology is not available, he must recommend to Congress a 1-year extension. The Congress, with a complete record of information available to it, will then be in a position to determine if the Secretary's recommendations are in the public interest. Congress has made a policy judgment in establishing the 1975 deadline, and it is only logical that Congress should have the authority to review that policy decision on the basis of social, health, and economic considerations, which might become apparent as that deadline approaches.

By the terms of the amendment, Congress would be given the final opportunity to act, thus placing the responsibility where it should be. The procedure is similar to that employed in the executive reorganization acts and would be more expeditious than depending on court action with the potential for delay incumbent in that process.

COMPLETE TEXT OF PROPOSED AMENDMENT

Amend section 202(b) (4) to read as follows:

"(4) (A) Within 24 months but no later than 12 months before the effective date of standards established pursuant to this subsection any manufacturer or manufacturers may file with the Secretary an application for a public hearing on the question of a suspension of the effective date of such standards for one year. Upon receipt of such application, the Secretary shall promptly hold a hearing to enable such manufacturer or manufacturers and any other interested person to present information revelant to implementation of the standards.

"(B) In connection with any hearing under this subsection, the Secretary may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) Within 6 months after such receipt of the application for suspension, the Secretary shall, if he finds upon the preponderance of evidence adduced at such hearing that a suspension is essential to the public interest and the general welfare of the United States, that all possible and good faith efforts have been made to meet the standards established by this subsection, and that effective control technology, processes, operating methods or other alternatives are not available or have not been available for sufficient period to achieve compliance

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prior to the effective date of such standards even with the full application of section 309 of this Act, recommend to Congress that (i) the effective date of such standard be suspended for a period of only one year, and (ii) the emission standard that should be applied during any such suspension which standard

shall reflect the greatest degree of emission control possible through the use of technology available.

"(D) The findings and recommendations required by this subsection shall not be subject to judicial review. Such recommendations shall be effective as law at the end of the first period of 60 calendar days of continuous session of Congress after the date on which the recommendation is transmitted to it unless, between the date of transmittal and the end of the 60-day period, either House passes a resolution stating in substance that the House does not favor such recommendation.

"(2) For the purpose of this subsection:

"(i) Continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) The days of which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

"(E) Nothing in this subsection shall extend the effective date of any emission standard established pursuant to this subsection for more than one year."

Adoption of the above amendment will provide a responsible answer to a difficult problem. If Congress, in a declaration of national policy, establishes stringent emission requirements for the automobile industry, it should assure congressional review of that policy judgment in the event that compliance with those standards is not possible.

My State of Kansas is fortunate that it does not face so many of the severe problems of air pollution confronting more intensively industrialized States. Passage of this bill will assist in remedying the problems which do exist and insure the preservation of the high quality of air Kansas presently enjoys. Specific pollutants present in the Kansas City air quality control region will be subject to action by both Kansas and Missouri within 3 years.

Under this bill, we can continue to encourage the location of new industry in Kansas and other rural and unspoiled regions without fear of polluting the high quality of air found there. At the same time, national standards for new stationary sources will not place some States at a comparative disadvantage affecting industry decisions on plant locations.

I join my colleagues in unanimously reporting this bill and ask them to join me in seeking passage of the above amendment.

BOB DOLE

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INDIVIDUAL VIEWS OF SENATOR EDWARD J. GURNEY

I wish to express my support of S. 4358, the National Air Quality Standards Act of 1970. There can be no denying that the problem of air pollution must be dealt with in the strongest possible manner and given the same scrutiny, attention, and high priority that we have given other urgent national problems.

The problem of air pollution and its effect on the health of our people has been generally recognized by most sectors of our society as a major domestic issue, ranking along with crime, poverty, and economic problems. Dealing with a problem of such magnitude requires the teamwork of effective congressional and administrative action, an all-out effort on behalf of every American citizen. With such high stakes involved, I would hope that everyone concerned will respond to this problem accordingly. As the President said in his February message on the environment:

"I have sent to this session of Congress a sweeping set of proposals to clean up our Nation's air and water and to make our land more livable. * * * The time has come when we can wait no longer to repair the damage already done, and to establish new criteria to guide us in the future * * *"

There are a number of complex sections in this bill, and I feel that the Public Works Committee has worked hard to come up with an effective, workable piece of legislation. Special credit should go to the Subcommittee on Air and Water Pollution. But, the bill as reported out of the committee contains some features which trouble me.

I am particularly concerned about two portions of the bill: (1) the establishment in the bill of a figure for emission pollution for motor vehicles for January 1, 1975, and (2) the method of judicial review of a request for temporary relief from this deadline as set forth in the bill.

The spelling out in the bill of a standard for motor vehicle emission is unique. Setting of other standards for pollution emission by other sources is left up to the Secretary of Health, Education, and Welfare, which is surely sensible since his aids and the experts on pollution are possessed of the required expertise.

I fear that the spelling out in the bill of auto emission standards and mandating them for January 1, 1975, is open to the criticism that it is arbitrary. Earlier in the year, auto industry heads met with the President and pledged the attainment of new and strin-

gent antipollution standards by 1975; at the same time, a still more stringent goal roughly halving these 1975 requirements was proposed for achievement by 1980. This bill simply cuts both time and standards in half by substitution of the year 1975 for the year 1980.

Although I do not sit on the Subcommittee on Air and Water Pollution, I am advised that no hearings were conducted on the matter of whether the 1980 goals can be met by January 1, 1975. In fact,

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the auto industry had no inkling of a 5-year advance of goals until the full committee began its markup.

Several top auto officials have stated that the standards established in the bill are impossible of attainment for January 1, 1975.

I do not know whether or not this is true, and neither does any other member of the committee.

Even so, I think that the January 1, 1975 deadline can be left in the bill, provided there is a sensible way to review whether this standard can be met and a means for relief if it is found that it cannot be met.

As the bill is now written, a manufacturer or manufacturers may apply to the Secretary of Health, Education, and Welfare within 24 to 12 months before the effective compliance date of January 1, 1975, requesting a 1-year extension of this date. Within 6 months of receipt of such application, the Secretary will be required to issue a decision. This decision would then be subject to judicial review by the U.S. Court of Appeals for the District of Columbia Circuit and further, if necessary, by the Supreme Court.

I suggest this court review is cumbersome and time consuming. The court will have no technical knowledge of this extremely complex subject.

I would suggest that this section be changed to keep this decision-making process totally within the jurisdiction of the Secretary of Health, Education, and Welfare, and that the Secretary have the authority to make two 1-year extensions, instead of only the 1 year as the bill now provides.

It is the intent of the committee in the bill as written, that the Secretary, after consultation with appropriate advisory committees, independent experts, and Federal departments and agencies,

and after hearing the comments of interested persons, shall set emission level standards for moving sources.

Further, it is the Secretary who shall be responsible for the primary review of such standards and their implementation and it is the Secretary who, in the final analysis, shall have the authority, under the bill, to change these standards. I think it is not unreasonable, therefore, to presume that the Secretary having been charged with such great responsibility, is in the best position to make a final determination as to any need for a suspension of the compliance date, which we have set. As a matter of fact, the pollution experts within the Department of Health, Education, and Welfare have been working closely for some time now, in a supervisory and enforcing role, with the automotive industry.

I do not think that a suspension would be lightly or casually granted by the Secretary. But, if such a suspension is deemed necessary (after an exhaustive administrative proceeding at which all points of view are heard, considered and digested) there would appear to me to be no valid reason to subject such a good faith finding by the Secretary to the further scrutiny of courts. In fact, a further court review might delay unnecessarily the enforcement provisions of the bill.

EDWARD J. GURNEY.

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SECTION-BY-SECTION ANALYSIS

SECTION 1

This section provides that the short title is the "National Air Quality Standards Act of 1970."

SECTION 2

Subsection (a) amends section 104(a)(1) of the Clean Air Act to provide that the Secretary of HEW shall conduct research on the removal of air pollution agents or combinations thereof from fuels prior to their combustion; on improving the efficiency of fuels combustion so as to decrease emissions of pollutants into the air; and in developing and producing synthetic or new types of fuels which, when combusted, result in substantial reduction of emissions of pollutants into the air.

Subsection (b) amends section 104(a)(2) of the Clean Air Act by adding to that section a provision which requires the Secretary to provide grants to pay part of the costs, as determined by him, of programs designed to develop low emission alternative propulsion sources for the present internal combustion engine.

Subsection (c) amends section 104(c) of the Clean Air Act by extending the authority for research on fuels and vehicles through the end of fiscal year 1973. It authorizes appropriations totalling over a 3-fiscal year period $450 million.

SECTION 3

Subsection (a) amends section 105(a) of the Clean Air Act by adding a new paragraph. Under this paragraph the Secretary may pay up to 75 percent of the costs of planning, developing, establishing, or improving regional air quality control programs and up to three-fifths of the cost of maintaining such programs. Before making such grants, the Secretary must determine that the regional program is operated by the State air pollution agency and is applicable to the entire air quality control region; that the State has adequate regulatory authority, including effective enforcement tools, to abate and control air pollution from all sources, including moving sources, in such region; that the State program does not supplant any such program of any municipality or a group of them unless the Governor determines that the public interest requires it; that non-Federal matching funds for the region will not be reduced, and that Federal grants will be in addition to other funds available to the State agency; and that there is an adequate and effective State program of coordination.

Subsection (b) adds to section 105 of the Clean Air Act two new subsections.

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The first authorizes the Secretary to reduce grant payments when the grant recipient is detailed personnel of the Public Health Service under section 301(b) of the Act to aid in implementing the Act's objectives.

The second directs the Secretary to withhold grant funds under section 105 of the Act where he determines that a program of any air pollution control is and will continue to be under-staffed or under-funded.

SECTION 4

This section strikes from section 106 of the Clean Air Act subsection (b) relating to the designation or establishment of air quality planning commissions and makes other technical changes.

SECTION 5

This section repeals the present sections 107 through 109 of the Clean Air Act and substitutes new sections 107 through 109 to the Act.

Section 107

The new section directs the Secretary to give special emphasis to research on the effects of air pollution agents or combinations thereof on public health and welfare to improve knowledge of the contribution of such agents to the occurrence of adverse effects of health and the short- and long-term effects of such agents on the total human environment.

It directs the Secretary to conduct epidemiological studies of the effect of such agents on mortality and morbidity; to conduct clinical and laboratory studies; to utilize the facilities of existing scientific laboratories and research centers of other Federal agencies where such facilities are reasonably available for such purposes; to utilize the authorities of section 103(b) of the Act for such research; and to consult with other Federal agencies to avoid unnecessary duplication of research and studies.

The new section authorizes the Secretary to enter into contracts for up to 10 years even though funds beyond the first year of the contract may not yet be appropriated. Authorization up to $15 million is authorized for such long-term contracts. This authorization sum is in addition to other sums appropriated under the Act.

The new section makes available for the benefit of the general public all developments from research, demonstrations, experiments, or other such work carried out, contracted for, sponsored, or authorized under the Act after this section is effective.

Section 108

Section 108 provides for the designation of air quality control regions. Within 90 days after enactment, the Secretary must designate all those interstate and major intrastate air quality control regions which are not yet designated under the Act which

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he believes are necessary and appropriate for such designations. The designations must be based on administratively practicable jurisdictional boundaries, the need to encompass in the region entire areas of significant urban industrial concentrations, the existing levels of ambient air quality, and

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other factors that will lead to prompt and effective implementation of ambient air quality standards for that region. Regions designated prior to the effective date of this subsection are continued, but those regions and the new ones must be reviewed at least every 5 years and, if appropriate, modified. Any State or portion thereof not included in a designated region shall be considered a region for the purpose of the Act. In such cases the Governor of a State may subdivide such non-designated region into two or more regions to facilitate the development of effective implementation plans.

Section 109

This new section directs the Secretary to publish (initially 30 days after enactment) a list of air pollution agents or combination thereof for which air quality criteria will be issued. He can add to the list periodically. The agents on the initial list must include all those pollution agents or combinations of agents which have, or can be expected to have, an adverse effect on health and welfare and which are emitted from widely distributed mobile and stationary sources, and all those for which air quality criteria are planned.

Twelve months after such initial list is published, the Secretary must issue air quality criteria for those listed agents.

The Secretary must also issue information on air pollution control techniques.

This section continues in effect those air quality criteria and information on pollution control techniques published prior to this section.

This section provides that such criteria and information shall be published in the Federal Register and be available to the public.

SECTION 6

This section redesignates the present sections 110 and 111 of the Clean Air Act as sections 117 and 118, and adds to the Act seven new sections.

Section 110

This section directs the Secretary to publish in the Federal Register proposed national ambient air quality standards for any air pollution agent or combination thereof for which air quality criteria were issued by him prior to the enactment of this section. After allowing a reasonable period for the public to submit written comments only on such standards and for consideration of such comments, the Secretary must finally promulgate them with modifications if needed. Such promulgation must occur not later than 90 days after they are proposed.

In regard to such pollution agents for which such criteria are to be issued after enactment of this section, the Secretary shall publish together with the issuance of such criteria, such standards in the same manner as just described.

Such standards shall be the ambient air quality standards which must be attained and maintained to protect the health of persons.

When national ambient air quality standards are proposed the Secretary must also publish national air quality goals necessary to protect the public health and walfare from any known or anticipated effects associated with the presence of such agents in the ambient air.

Standards and goals are effective on promulgation.

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Section 111

Whenever ambient air quality standards and goals are promulgated under section 110 of this Act, each State must, after public hearings, develop, adopt, and submit to the Secretary, within 9 months, plans to implement, maintain, and enforce such standards and goals in each air control region, or the portion thereof located in such State. Such public hearings shall consider more restrictive standards, unless a separate public hearing to consider more restrictive standards is provided. The Secretary must approve or disapprove the adopted plans within 4 months after the 9 month period.

The Secretary shall approve a plan if, among other things, it provides for the attainment of the standards within 3 years, includes emission requirements and schedules of compliance, includes provisions for monitoring devices, includes effective procedures, including land use and air and surface transportation controls and permits, to insure that all air pollution sources will

not prevent or interfere with the attainment and maintenance of such standards and goals, and provides that the State has adequate personnel, funding, and authority to carry out and enforce the plan, including emergency powers comparable to section 303 of the Clean Air Act.

Where a region covers two or more States, the plan of both States must be compatible.

The Secretary may extend the time to submit portions of a plan dealing with ambient air quality goals where he believes there is a good faith effort to comply, but the extension shall not be more than 18 months.

If a State does not adopt and submit a plan for an air quality control region within the period prescribed, or if the Secretary disapproves a plan, the Secretary must promptly prepare and publish proposed regulations setting forth a plan for the appropriate air quality control region. Where the State fails to hold a public hearing concerning the adoption of a plan for that region, the Secretary must provide an opportunity for such hearing on the proposed regulations. In publishing such regulations, the Secretary shall invite written comments unless a public hearing is required. Within 6 months after the date established for a State to submit adopted plans, the Secretary, if a State has not done so, must finally promulgate such regulations which shall thereafter be the plan for that region until the State adopts and submits a plan and such plan is approved. Regulations published and promulgated by the Secretary must be consistent with the criteria set forth in subsection (a) (2) of this section.

This section provides that standards and plans adopted by any State and approved by the Secretary prior to enactment of this section will continue in effect unless the Secretary determines that they are inconsistent with the Clean Air Act, is amended by this bill, and will not achieve air quality within the time prescribed. If he so determines, he must notify, within 90 days after standards are promulgated under section 110(a) (1), the appropriate State or States and specify the areas which are deficient. If the State does not adopt, after public hearings, such necessary changes and within 6 months after such notice, the Secretary shall promulgate by regulation such changes which will thereafter be effective.

Whenever the Secretary or his representative finds from new

information developed after a plan is approved that the plan is not or

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will not be adequate to achieve promulgated ambient air quality standards he must notify the appropriate States and give them an opportunity to respond to the new information. If the State fails to respond or makes an inadequate response within 90 days after notice, the Secretary shall publish, and finally promulgate, revisions to the implementation plan of that region. The revision can include a revision in the time established to attain national standards, but, if the revision involves an extension of that time, such extension shall not be for more than a year. Further, such extensions shall not affect any emission requirement, timetable, or schedule of compliance unless one of them is the subject of revision.

Not later than 1 year prior to the end of the period established to attain ambient air at the quality established by any nationally ambient air quality standard, the Governor of a State in which an air quality control region is wholly or partially located may petition the appropriate Federal District Court for relief from the effect of the expiration of such period on that region or some part of it or on a person or several persons in the region. If the region is an interstate one, other affected Governors may also intervene in opposition to or in support of the petition. The petition must be heard and decided by a three judge court and their decision may be appealed directly to the Supreme Court. Provision is made for the District Court to re-arrange its docket of cases in order to give priority to the petition. Where the Secretary is not automatically a party to the action, he must intervene to present evidence and argument on the merits of the petition. Others may also intervene at the court's discretion.

This section limits the powers of the court in granting relief by establishing clear criteria for it to follow in reaching its decision. The section established that the paramount interest of the Nation is achieving ambient air quality to protect health. Thus, relief can only be granted if the court clearly determines it essential to the public interest and the general welfare of persons in the affected region. The court must find that substantial efforts have been made by the State or States and others in the region to protect the health of persons in the region and that means to achieve the standards are not available or have not been available

for a sufficient period to achieve compliance, or that such failure is primarily caused by the failure of the Federal Government to control emissions from a facility granted an exemption by the President under section 118 of the Act. The court may grant an extension for 1 year, although further 1-year extensions are possible on the filing of new petitions each time and the holding of new hearings and the making of new findings.

If the court grants an extension the Secretary is required to make necessary modification in the applicable implementation plan to achieve compliance within the year grace period.

Court extensions shall not affect compliance with emission requirements, timetables, schedules of compliance, or other portions of an implementation plan unless they are the subject of the specific court order extending the time.

Section 112

This section makes it clear that the States may adopt for any air quality control region and are encouraged to do so, as their needs demonstrate, stricter ambient standards or plans, or emission standards to maintain a higher level of air quality or to achieve that quality in a shorter period of time.

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Section 113

The various terms used in this new section are defined. This section directs the Secretary to publish, within 90 days after enactment and periodically thereafter, a list of categories of stationary sources which shall be subject to standards of performance.

Within 120 days after such list is published, the Secretary must publish proposed regulations establishing Federal standards of performance and give the public an opportunity to present written comments thereon. After considering the comments and, if appropriate, making modifications in the regulations, he shall, within 90 days after such publication, promulgate such standards. Such standards are effective upon promulgation. The Secretary may distinguish between classes, types, and sizes within each category.

This section and the standards developed thereunder will apply to new sources owned and operated by the United States.

It provides for the promulgation of regulations concerning the certification of compliance with any standard of performance and

for the issuance of such certifications by the Secretary. Each State may establish its own certification procedure which is at least equal to that established by the Secretary. In such cases, the Secretary shall delegate certification to the State. The Secretary retains unrestricted enforcement authority.

This section directs owners or operators of new sources to keep records, make reports, install and use monitoring equipment, and provide information to the Secretary to insure compliance with this section, and to permit authorized personnel to have access to and copy records as needed. Except for emission data, the Secretary may consider such records, reports, or information confidential only if the owner or operator shows, to the satisfaction of the Secretary, that any such information, if made public, would disclose proprietary information. Matters not directly related to such information would not be eligible for confidential treatment in accordance with section 1905 of title 18 of the United States Code. Such confidentiality, however, will only extend to that portion of the information that would so reveal such process or secret.

This section makes it unlawful to operate a new source without a certification, to operate any certified source in violation of the standards, or to fail to comply with recordkeeping requirements. It authorizes injunctions and civil penalties for such violations.

Section 114

This new section defines the terms "selected air pollution agents" and "owner or operator" as used in this section.

The section directs the Secretary to compile and publish within 180 days after enactment and periodically thereafter a list of air pollution agents or combinations thereof for which he believes emission standards are appropriate. Thereafter, he will periodically publish regulations establishing emission standards for such agents. The objective of the regulation is to insure that emissions of such pollutants will not endanger public health. The emission standards shall be effective not later than 24 months after promulgation.

The section authorizes the Secretary to waive the application of any such standard to any stationary source. To obtain the waiver, the Secretary must find that the source has achieved maximum air pollu-

tion control using control techniques currently feasible at the time of application, and that the health of persons will not be adversely affected. The Secretary must publish his findings and his decision on a waiver application is subject to judicial review.

The section contains recordkeeping and limited confidentiality provisions similar to those found throughout the Act.

Provision is made for enforcement and sanctions for violation of the provisions of the section.

States which develop adequate enforcement procedures for such standards shall be delegated enforcement authority.

Section 115

This new section directs the Secretary, within 90 days after enactment and periodically thereafter, to publish a list of air pollution agents or combination thereof which are hazardous to the health of persons as that term is defined in subsection (b) of this section and which shall be subject to an appropriate prohibition or emission standard developed under such section.

Within 180 days after he publishes each such list, the Secretary must publish a proposed prohibition of such emissions from any stationary source and hold a hearing thereon within 30 days after such publication. Not later than 6 months after such publication, he must promulgate such prohibition and enforce it as provided in this section. But, if the Secretary finds, based on a preponderance of evidence on the record compiled at such hearing, that the agent is not so hazardous, he shall immediately publish an emission standard for such agent in accordance with the provisions of section 114 of the Act. If he finds based upon such evidence that the agent is itself hazardous to health but a departure from the proposed prohibition will not be hazardous to health, he shall publish an emission standard for such agent.

Provision is made for enforcement of such prohibition and emission standard and for recordkeeping and limited confidentiality provisions similar to those found throughout the Act.

Section 116

This new section prohibits and provides for the enforcement of any violation by any person, as that term is defined in section 302 of the Act, of any applicable implementation plan, including any emission requirements forming a part of that plan, or any emission standard or standard of performance, or procedural requirement established under the Act.

Whenever there is a violation of any element of an implementation plan, and the Secretary finds that the State wherein the violation occurs is not administering its plan in the manner contemplated by this Act, as determined by him, the Secretary or his representative shall issue an abatement order. No similar finding is required for violations of standards of performance under section 113 of the Act or emission standards under section 114. Where the person issued the order violates an emission requirement or standard or standard of performance, the time stated in the order to initiate abatement, the violation must not exceed 72 hours; otherwise the time required for initiation of abatement shall be stated in the order. Copies of all orders are sent to the appropriate State air pollution control agency. Where the person violating the prohibition is a corporation, the corporate officers must also

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get a copy of the order. The order remains in effect until the Secretary or his representative finds that the violation has been abated.

This section authorizes the Secretary or his authorized representative to conduct appropriate investigations to carry out the purpose of this Act.

This section directs the Secretary to institute civil actions to enforce such orders when there is no compliance with such order. The court shall not stay any such order unless it finds that the public interest would not be affected by such a stay and that there is a substantial likelihood that the violator will prevail on the merits.

This section also provides criminal sanctions for certain knowing violations of the act.

SECTION 7

This section amends redesigned section 118 of the Clean Air Act.

Section 118

This section directs that all Federal agencies shall comply with the requirements of the Act just as a nonfederal agency or individual must do in the administration of any real property or facility and in the conduct of any activity. Except for new sources

subject to standards of performance under section 113, the President may grant exemptions for executive branch agencies where it is in the paramount interest of the United States, so long as the exemption is not due to lack of appropriations, unless specific appropriations were requested by him and the Congress specifically failed to provide the funds. The exemptions cannot exceed one year. Exemptions for agencies of the legislative and judicial branches must be by Act of Congress.

The Governor, the Attorney General, or any citizen of any State affected by a failure of a Federal agency to comply with the provision of this Act may seek to enforce this requirement under section 304 of the Act.

SECTION 8

This section amends sections 202 through 212 of the Clean Air Act.

Section 202

This revised section directs the Secretary to prescribe regulations establishing standards governing the emission of all known pollution agents from vessels, aircraft, commercial and new noncommercial vehicles and their engines which cause or contribute to air pollution which endangers the public health or welfare.

Such emissions standards must be based on the degree of emission control needed to protect the public health and welfare and the implementation of ambient air quality standards without any reference to the power source or the propulsion system.

Any regulation issued or proposed under title II of the Act prior to enactment of this revised section shall continue in effect until revised by the Secretary.

The regulations establishing these standards must be published in accordance with 5 U.S. Code 553 which means that the public must be given a reasonable opportunity to express their views through the submission of written comments. After considering these comments, the Secretary must promulgate the regulations with modifications, if appropriate.

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This section provides that the Secretary periodically review regulations, standards, etc., and, revise them when appropriate.

The effective date of the regulations will be prescribed therein

after considering, solely from a technical standpoint, what minimum time is needed to achieve compliance.

This section provides that 1975 models of new light duty vehicles or new light duty engines or those produced after January 1, 1975, must, for purposes of certification, comply with emission standards established by the Secretary for certain air pollution agents. Such compliance shall mean, at a minimum, a reduction of the emissions for 1970 model year vehicles or engines of 90 percent. Such emission standards shall be based on measurement techniques to be established 180 days after enactment by the Secretary. The Secretary shall determine, and publish his determination as soon as possible after enactment, vehicles and engines which fall into the category of "light duty."

Five years and one day after criteria are published for air pollution agents for which no emission standards were in effect prior to enactment of this bill, new light duty vehicles or engines shall, for purpose of certification, comply with emission standards established by the Secretary. Such standards must, at a minimum, represent a 90 percent reduction from the average of such agents, as measured from 1970 models. The Secretary must publish such standards at the same time as he promulgates national ambient air quality standards. He must afford an opportunity for written comment. Ninety days thereafter, he must promulgate such standard finally unless he finds during this period, and publishes such finding, that a more or less stringent emission standard is necessary to achieve and maintain the national standard in any region. In such case, he shall promulgate the revised final vehicle emission standard. Such emission standards shall be based on measurement techniques established by the Secretary within 90 days after criteria are published.

Provision is made for suspending the effective date of standards required by this subsection for one year only. To obtain relief from the effective date, a manufacturer must apply for it within 24 months, but not later than 12 months before the standard is to be effective. The Secretary must hold a public hearing on the request and may permit interested citizens or agencies to intervene. The filing of a request does not stay the effect of the standard.

The Secretary must act on the request for suspension within six months. The Secretary, based on the hearing record, may decide to grant the request if he determines and publishes it that the suspension is essential to the public interest and the general wel-

fare, the manufacturer has clearly demonstrated that a bona fide attempt to comply with the emission standards was made, and that the manufacturer has established at the hearing by a preponderance of evidence that effective control technology, processes, operating methods, or other alternatives are not available or have not been available long enough to achieve compliance. If the Secretary grants the manufacturer's request for relief, he must also promulgate interim standards which will require application of the best available technology to achieve the greatest degree of emission control possible.

Provision is made for judicial review of the Secretary's decision at the request of the manufacturer or other citizens or agencies. The

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court is bound by the same criteria as the Secretary. Such review does not stay the effective date of a standard.

If and when new power sources or propulsion systems for vehicles are developed and submitted for certification to determine their pollution effect, the Secretary must determine that they will not cause or contribute to a violation of a national ambient air quality standard.

Regulations concerning aircraft and vessels will require consultation with the FAA and the Coast Guard. The Secretary of Defense may exempt public vessels and aircraft from the requirement for a period of one year.

Section 203

This revised section extends the prohibitions now in the Act to vessels and aircraft and their engines and to owners or operators of vessels, aircraft, commercial or new non-commercial vehicles and their engines. It also prohibits, except for maintenance or repair purposes, the removing or rendering inoperative of devices or other elements installed on vessels, aircraft, or vehicles and their engines prior to delivery to an ultimate purchaser, or during use.

The Secretary can exempt certain vessels, etc., for research, investigation, study, demonstration, or training purposes only.

The revised section also extends the provisions of the Act concerning admission of new vehicles and their engines into the United States to new vessels and aircraft and their engines.

Section 204

This section continues with some technical changes to the present provisions of the Act concerning injunctions. It adds to this section a requirement that the Secretary delegate this authority to any State that has effective authority and will use it to enforce under this title of the Act.

Section 205

Except for some technical changes, this section is not substantially changed.

Section 206

Under this revised section, provision is made for testing or arranging for such testing of new vessels and aircraft or their engines, or a class thereof (in addition to vehicles and their engines as now required by this section) as submitted by a manufacturer, including an importer, to determine if they conform to the regulations. If they do, a certification of conformity is issued. Testing and certification of vessels will be done by the Coast Guard for the Secretary. Testing and certification of aircraft will be done by the FAA. The Defense Department will conduct testing for military vessels, aircraft, and engines. The Secretary must develop and publish regulations for testing and after written comment shall promulgate them.

The Secretary must also establish for manufacturers methods and procedures for testing and to determine the relationship of test results to the section 202 regulations, and labeling requirements for all engines and for vehicles.

The Secretary can at any time test each vessel, vehicle, aircraft, or their engines subject to section 202 regulations and an issued certificate, while such are in the custody and control of the manufacturer. If such

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tests reveal a failure to conform to such regulations, the Secretary must immediately notify the manufacturer, including importers, thereof. He may then suspend or revoke the certification until he finds that the class of vessels, vehicles, aircraft, or engines thereof manufactured do so conform and reinstates the certificate by notice.

When a manufacturer is notified of such suspension or revocation or the denial of such certification, he may appeal to the Secretary with 30 days thereof and request a public hearing.

Such an appeal will not stay such action. The Secretary then must make a finding of fact and issue a decision which is subject to judicial review by the U.S. Court of Appeals for the District of Columbia. The findings of the Secretary shall be presumed correct. Again the appeal does not automatically stay the suspension.

To enforce Title II of the Clean Air Act, authorized representatives of the Secretary may enter any facilities of a manufacturer or dealer where vessels, vehicles, aircraft, and engines are manufactured, assembled, or constructed or held for introduction into commerce or held for sale or resale after such introduction to inspect them.

Every manufacturer must provide, at the time of delivery, dealers and the ultimate purchaser a certificate that the vessel, vehicle, aircraft, or engine conforms to the regulations.

Section 207

This revised section provides for the testing of new vehicles or new vehicle engines, or both, by the manufacturer before delivery to the dealer or the ultimate purchaser to assure that they will conform to the certificate issued for the lifetime emissions of such vehicle or engine. Before any certificate is issued for such vehicles or engines a manufacturer must have a testing program. The Secretary will establish by regulation methods and procedures for such testing.

This section also establishes a manufacturer's warranty program regarding systems or devices installed to control or reduce emissions of air pollution agents. The warranty must accompany each new vehicle or new vehicle engine together with written instructions for necessary maintenance by the ultimate purchaser. The warranty shall also extend on behalf of subsequent purchasers. A tag shall also be affixed to each new vehicle and new vehicle engine. The actual cost, not the retail price, to the manufacturer of emission control devices or systems, including their installation costs, and the warranty thereof shall be disclosed prior to delivery to the dealer to the public by the manufacturer. Failure to do so subjects the manufacturer to the enforcement provisions of title 15 of the U.S. Code section 1233 which shall be utilized by the Secretary.

Where the manufacturer finds defects in a new vehicle or engine during the time of the warranty and such defect causes or will cause a nonconformity with the certification or regulations, he

must notify the ultimate purchaser or subsequent purchasers thereof of the defect within sixty days. The notice will state the defect, and the remedy to be taken at no cost to the owner. Copies of the notice must be sent to the Secretary at his request.

Where the Secretary descovers defects through testing, inspection, studies, or otherwise he shall immediately notify the manufacturer and publish the notice in the Federal Register, within 30 days thereafter. The Secretary shall provide an opportunity for anyone to present

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views either in writing or at a hearing. Within 60 days after the notice is issued, the Secretary shall order the manufacturer to notify the ultimate purchaser and subsequent purchasers of the defect, unless based on the record, the Secretary finds that the class or category of new vehicles or new vehicle engines is in conformity with the regulations and certification and publishes his finding in the Federal Register.

Section 208

This revised section authorizes the Secretary to grant to the States up to two thirds of the cost of developing and maintaining effective vehicle emission device systems inspection programs and emission testing and control programs. These programs must be consistent with the highway safety program of the Department of Transportation and the grants, when made for a State vehicle inspection program, must be applied to air pollution control only.

Section 209

This section requires the making of reports and providing of information to the Secretary by a manufacturer. Whenever the person providing such information clearly shows, to the satisfaction of the Secretary, that the disclosure of it for any purpose to the public would directly result in harm to such person because it would involve the divulging of proprietary information, the Secretary shall afford that particular information confidentiality in accordance with the purposes of 18 U.S. Code 1905. This provision for confidentiality shall not apply to emission data. Further, even where confidentiality is granted, all such information may be disclosed to those Federal employees concerned with carrying out this Act or when relevant to a proceeding under the Act.

Section 210

The provisions of this section, with the exception of some technical changes to include within its scope vessels and aircraft and their engines, are nearly identical to the present section 208 of the Act. However, provision is added for the States to impose, after hearings, and a confirming determination by the Secretary, more restrictive standards required to implement national ambient air quality standards. Further, this section makes clear that a State could, if necessary to achieve and maintain compliance with national ambient air quality standards, control, regulate, or restrict under its law, the use, operation, or movement of aircraft, vessels, or vehicles.

Section 211

This new section directs the Secretary to promulgate promptly Federal standards of performance for used vehicles emission control devices or systems to reduce air pollutants from used vehicles. Promptly thereafter, he must publish regulations for certifying and warranting such devices or systems. In so doing, he must consider technical feasibility of installing and maintaining such devices or systems. After a reasonable time for written comments, he shall promulgate such standards and they shall be effective immediately.

Once promulgated manufacturers and importers of such devices or systems can only sell or offer for sale, or import into commerce, devices or systems which conform to a device or system tested and certified by the Secretary. Provision is made for enforcing this requirement.

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Section 212

This section continues the present provisions of section 210 of the Clean Air Act concerning the registration of fuels and fuel additives, but adds to those provisions requirements concerning the regulation of such fuels.

The Secretary may prohibit the use of any fuel in commerce which may provide emissions that, he finds, would endanger the public health. In other cases, he shall, after hearings, prohibit their use in commerce if he finds it necessary to achieve effective emission control or to achieve an economic alternative in emission control or to protect the general welfare. The Secretary can-

not prohibit the use of any fuel if he finds that it would cause the use of a substitute that would produce the same or greater danger.

Section 213

This new section provides for the establishment of standards of low-emission vehicles and their engines not subject to section 202(b) of the Act and for the testing and certifying thereof.

Section 214

This new section defines various terms used in title II of the Clean Air Act.

Section 215

This section makes certain provisions of title II of the Clean Air Act, as amended by this bill, applicable to vehicles and vehicle engines manufactured 90 days after enactment of this bill.

SECTION 10

This section adds a new subsection to section 301 of the Act which provides that hereafter contracts under the Clean Air Act may be entered into without regard to the civil service laws and the Classification Act of 1949, as amended, insofar as the contracts involve the procurement of personal services.

SECTION 11

This section redesignates sections 303 through 310 as sections 311 through 318 and inserts after section 302 eight new sections.

Section 303

This section, with some technical changes, continues the provisions of section 108(k) of the present Clean Air Act providing authority for emergency abatement.

Section 304

This new section provides jurisdiction in the Federal district courts, without regard to the citizenship of the parties or the amount of controversy, to hear and decide civil actions instituted by any citizen or class of citizen to enforce or require enforcement of certain provisions of the Clean Air Act, including: any applicable schedule or timetable compliance, emission requirement, standard of performance, emission standard, or prohibition

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estabished under the Act. The actions may be brought against any person, as that term is defined in section 302(e) of the Act, where there is an alleged violation of any of its provisions, or against the Secretary where he fails

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to enforce any standards or orders established under the Act or to compel him to exercise any duty imposed on him under the Act.

The section does not, however, affect in any way whatever remedies such citizens or class of citizens might have under statutory or other law, nor does it provide for damage or nuisance actions.

Before instituting a citizen action to abate a violation, however, the petition must give notice to the Secretary, his representative, if any, the appropriate State agency, and the violator of the violation and allow at least 30 days thereafter to permit them to abate the violation. If the Secretary, his representative, or a State does institute proceedings to abate within this time, they must prosecute them in good faith and with deliberate speed to meet this notice requirement or the citizen is free to initiate his action. Actions to abate a violation of an order or certain specified provisions may be instituted without such notice. If the Secretary is not a party to the proceeding, he may intervene.

The court may award costs of litigation to either party whenever the court determines such an award is in the public interest without regard to the outcome of the litigation.

Section 305

This new section provides for the appearance of the Secretary's legal staff in legal proceedings under this Act.

Section 306

This new section requires that a person cannot enter into a procurement contract where such contract would involve the performance of work at a plant owned or operated by such person which is the subject of a conviction for a knowing violation under the Act. Such ineligibility shall continue until there is compliance.

Provision is also made for the President to issue in six months procedures to insure compliance with the Act in regard to grants and loans or contracts entered into, by Federal agencies.

Section 307

This section is based on provisions of the Labor Management

Relations Act, 1947, which prohibit certain unfair practices against employees by employers, including the discharge or discrimination of such employees, when they file charges or testify under that Act.

This section also prohibits an employer from discharging or discrimination against any employee or his representative who takes any measure to enforce or assist in the enforcement of this Act or carry out the purposes of this Act. It establishes a procedure to protect the employee who, for example, testifies at any proceeding under this Act.

Section 308

This section provides for judicial review of any promulgated ambient air quality standard or goal or prohibition, emission standard, or performance standard, or waiver granted under section 114 of the Act, or of any approved or promulgated implementation plan. The forum for such review is the U.S. Court of Appeals. The petition for review can be filed by any person or class of persons who believes that such promulgation, waiver or approval should be modified in any way, but such petition must be filed within 30 days after the date of such promulgation, waiver, or approval. Thereafter such review

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is only possible whenever significant new information has become available. Administrative findings or determinations made after proper proceedings provided under this Act shall be presumed correct, but may be rebutted.

The initiation of such a review will not result in any stay unless the party requesting the stay clearly shows to the court that there is a substantial likelihood of his prevailing on the merits and that the public interest will not be harmed in any way. Such review is subject to review by the Supreme Court.

Section 309

This section provides authority for the Secretary to order the owner of a patent, trade secret, or know-how to make such available at a reasonable royalty to any person who clearly demonstrates that without such assistance he will not be able to comply with the requirements of this Act. When so provided, provision must be made to prevent any disclosure to a third person, and for keeping and inspecting records. If the conditions relative to these items are violated, the license may be cancelled and there-

after the licensee cannot use or disclose such acquired know-how or trade secrets. No exemptions from antitrust laws, judgments, orders, or decrees are to be implied from this section.

Section 310

This new section provides for the review by the Secretary of detailed statements prepared under section 102(C) of Public Law 91—190, and proposed regulations of any Federal agency, where they relate directly or indirectly to any matter or duties arising under this Act. When the Secretary finds any such statement or regulation unsatisfactory, he shall refer it to the Council on Environmental Quality for a determination and recommendation to the President, which shall be made public.

SECTION 12

This section provides authorization of appropriations under the Act.

SECTION 13

This section adds to the Clean Air Act a new title concerning noise pollution.

Section 401

This section provides that the short title of the new Title IV of the Act is "Noise Pollution and Abatement Act of 1970."

Section 402

This section directs the Secretary of HEW to establish an Office of Noise Abatement and Control in HEW. The Secretary is then directed to carry out through that office an investigation and study of noise and its effect on the public health and welfare, including its effect on wildlife, domestic animals, and personal and real property.

The purpose of the study and investigation is to identify and classify causes and sources of noise, to determine the effects of noise at various levels, to determine the projected growth of noise levels on urban areas, the effects on wildlife and real and personal property, the effects of sporadic extreme noise compared to constant noise and the

effect of sonic booms on real and personal property. The Secretary

is directed to hold public hearings, and to conduct necessary research, experiments, demonstrations and studies.

The Secretary must report his findings and results to the President and the Congress one year after enactment, together with his recommendations for legislation or other action to protect the public health and welfare from noise pollution. Where a Federal agency is conducting or sponsoring an activity resulting in noise which the Secretary determines to be a public nuisance or is otherwise objectionable, such Federal agency must consult with the Secretary for the purpose of developing appropriate means to abate such noise.

Section 403

This section would authorize a total appropriation of $30 million for the study and investigation and for the new office.

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CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

"TITLE I—AIR POLLUTION PREVENTION AND CONTROL

"FINDINGS AND PURPOSES

"SEC. 101. (a) The Congress finds—

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

"(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, in-

cluding injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

"(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

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

"(b) The purposes of this title are—

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

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

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

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

"COOPERATIVE ACTIVITIES AND UNIFORM LAWS

"SEC. 102. (a) The Secretary shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as

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practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

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

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

"RESEARCH, INVESTIGATIONS, TRAINING, AND OTHER ACTIVITIES

"SEC. 103. (a) The Secretary shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

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

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

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

"(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist

in the examination and evaluation of research progress and proposals and to avoid duplication of research.

"(b) In carrying out the provisions of the preceding subsection the Secretary is authorized to—

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

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

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

"(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5);

"(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

"(6) establish and maintain research fellowships, in the Department of Health, Education, and Welfare and at public or nonprofit private educational institutions or research organizations;

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

"(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

"(c) In carrying out the provisions of subsection (a) of this section the Secretary shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollution agents (or combinations of agents).

"(d) The Secretary is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this Act.

"(e) If, in the judgment of the Secretary, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Secretary. If the Secretary finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 108(a), he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollu-

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tion, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (d), (e), and (f) of section 108.

RESEARCH RELATING TO RULES AND VEHICLES

"SEC. 104. (a) The Secretary shall give special emphasis to research and development into new and improved methods, having industrywide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

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

(A) control of combustion byproducts of fuels,

(B) [for] removal of potential [pollutants] *air pollution agents or combination of such agents* from fuel *prior to combustion*,

(C) [and for] control of emissions from *the* evaporation of [fuels;] *fuels*,

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

(E) producing synthetic or new fuels which, when combusted, result in decreased atmospheric emissions;

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industry-wide application of preventing or controlling discharges into the air of various types of pollutants; [and]

(B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine.

(C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and

[(B)] *(D)* carrying out the other provisions of this section, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) : *Provided,* That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, United States Code, except that the determination, approval, and certification required thereby shall be made by the Secretary: *Provided further,* That no grant may be made under this paragraph in excess of $1,500,000;

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"(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the

point where they can be demonstrated on a large and practical scale;

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

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

"(b) In carrying out the provisions of this section, the Secretary may—

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

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

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

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

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

"(c) [For the purposes of this section there are authorized to be appropriated for the fiscal year ending June 30, 1968, $35,000,000, for the fiscal year ending June 30, 1969, $90,000,000, and for the fiscal year ending June 30, 1970, $45,000,000.] *For the purposes of this section there are authorized to be appropriated (1) for the fiscal year ending June 30, 1971, $125,000,000, (2) for the fiscal year ending June 30, 1972, $150,000,000, and (3) for the fiscal year ending June 30, 1973, $175,000,000.* Amounts appropriated pursuant to this subsection shall remain available until expended."

GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

SEC. 105. (a) (1) The Secretary is authorized to make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and grants to such agencies in an amount up to one-half of the cost of maintaining, programs for the prevention and control of air pollution and programs for the implementation of air quality standards authorized by this Act: *Provided,* That the Secretary is authorized to make grants to air pollution control agencies within the meaning of sections 302(b) (2) and 302(b) (4) in an amount up to three-fourths of the cost of planning, developing, establishing, or improving and up to three-fifths of

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the cost of maintaining, regional air quality control programs. As used in this subsection the term "regional air quality control program" means a program for the prevention and control of air pollution or the implementation of air quality standards programs as authorized by this Act, in an area that includes the areas of two or more municipalities whether in the same or different States.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4), the Secretary shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4), the Secretary shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(4) *Notwithstanding any other provision of this section, the*

Secretary is authorized to make grants to any State air pollution control agency in an amount not to exceed three-fourths of the cost of planning, developing, establishing, or improving, and grants to any such agency in an amount of not to exceed three-fifths of the cost of maintaining, a regional air quality control program within the meaning of this subsection if the Secretary determines that—

(A) such regional program is operated by such State agency and is serving or will serve an air quality control region within the meaning of this Act;

(B) such State agency has adequate authority to abate and control air pollution from all sources in the area served by such regional program;

(C) such regional program will not supplant any air pollution control program established by any municipality or group of municipalities unless the Governor of such State determines that it is in the public interest to supplant such air pollution control programs;

(D) development, establishment, improvement, or maintenance of such regional program will not result in a reduction of non-Federal matching funds available for air pollution control activities in the area served by such regional program, and that such grants shall supplement, not supplant, any other funds available to such agency; and

(E) such State agency has made adequate provision for coordination of such program with the related activities of any municipal, intermunicipal, or interstate programs serving all or any portion of such air quality control region.

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(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Secretary shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Secretary may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Secretary shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent

expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Secretary is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Secretary has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Secretary shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

(d) The Secretary, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 301 of this Act, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this Act. The amount by which such payments have been reduced shall be available for payment of such costs by the Secretary, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) If the Secretary determines that the program of any agency eligible for a grant pursuant to this section is inadequately staffed or funded to implement the requirements of this Act in any region, he shall withhold from such agency all or any portion of the funds which would be otherwise made available pursuant to this section. Such funds as would have been available to such agency shall be available to the Secretary to implement the purposes of this Act in such State or region.

INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

SEC. 106. [a] For the purpose of expediting the establishment of air quality standards in an interstate air quality control region designated pursuant to [section 107(a)(2)] *this title*, the Secretary is au-

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thorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors standards of air quality and plans for implementation thereof *and coordinating effectively the enforcement thereof* and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Secretary is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.

[(b)(1) Whenever the Secretary deems it necessary to expedite the establishment of standards for an interstate air quality control region designated pursuant to section 107(a)(2) he may, after consultation with the Governors of the affected States, designate or establish an air quality planning commission for the purpose of developing recommended regulations setting forth standards of air quality to be applicable to such air quality control region.

[(2) Such Commission shall consist of the Secretary or his designee who shall serve as Chairman, and adequate representation of appropriate State, interstate, local and (when appropriate), international, interests in the designated air quality control region.

[(3) The Secretary shall, within available funds, provide such staff for such Commission as may be necessary to enable it to carry out its functions effectively, and shall pay the other expenses of the Commission; and may also accept for the use by such Commission, funds, property, or services contributed by the State involved or political subdivisions thereof.

[(4) Each appointee from a State, other than an official or employee thereof, or of any political subdivision thereof, shall, while engaged in the work of the Commission, receive compensa-

tion at a rate fixed by the Secretary, but not in excess of $100 per diem, including traveltime, and while away from his home or regular place of business, he may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 3109) for persons in the Government service employed intermittently.

[AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

[SEC. 107. (a) (1) The Secretary shall, as soon as practicable, but not later than one year after the date of enactment of the Air Quality Act of 1967, define for the purposes of this Act, atmospheric areas of the Nation on the basis of those conditions, including, but not limited to, climate, meteorology, and topography, which affect the interchange and diffusion of pollutants in the atmosphere.

[(2) For the purpose of establishing ambient air quality standards pursuant to section 108, and for administrative and other purposes, the Secretary, after consultation with appropriate State and local authorities shall, to the extent feasible, within 18 months after the date of enactment of the Air Quality Act of 1967 designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors including atmospheric areas necessary to provide adequate implementation of air quality standards. The Secretary may from time public health and welfare and after consultation

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with appropriate State and local authorities, revise the designation of such regions and designate additional air quality control regions. The Secretary shall immediately notify the Governor or Governors of the affected State or States of such designation.

[(b) (1) The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, from time to time, but as soon as practicable, develop and issue to the States such criteria of air quality as in his judgment may be requisite for the protection of the public health and welfare: *Provided,* That any criteria issued prior to enactment of this section shall be reevaluated in accordance with the consultation procedure and other provisions of this section and, if necessary, modified and reissued. Such issuance shall be announced in the

Federal Register and copies shall be made available to the general public.

[(2) Such criteria shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

[(3) Such criteria shall include those variable factors which of themselves or in combination with other factors may alter the effects on public health and welfare of any subject agent or combination of agents, including, but not limited to, atmospheric conditions, and the types of air pollution agent or agents which, when present in the atmosphere, may interact with such subject agent or agents, to produce an adverse effect on public health and welfare.

[(c) The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on those recommended pollution control techniques the application of which is necessary to achieve levels of air quality set forth in criteria issued pursuant to subsection (b), including those criteria subject to the proviso in subsection (b) (1), which information shall include technical data relating to the technology and costs of emission control. Such recommendations shall include such data as are available on the latest available technology and economic feasibility of alternative methods of prevention and control of air contamination including cost-effectiveness analyses. Such issuance shall be announced in the Federal Register and copies shall be made available to the general public.

[(d) The Secretary shall, from time to time, revise and reissue material issued pursuant to subsections (b) and (c) in accordance with procedures established in such subsections.

[AIR QUALITY STANDARDS AND ABATEMENT OF AIR POLLUTION

[SEC. 108. (a) The pollution of the air in any State or States which endangers the health or welfare of any persons, shall be subject to abatement as provided in this section.

[(b) Consistent with the policy declaration of this title, municipal, State, and interstate action to abate air pollution shall be encouraged and shall not be displaced by Federal enforcement

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action except as otherwise provided by or pursuant to a court order under subsection (c), (h), or (k).

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[(c) (1) If, after receiving any air quality criteria and recommended control techniques issued pursuant to section 107, the Governor of a State, within ninety days of such receipt, files a letter of intent that such State will within one hundred and eighty days, and from time to time thereafter, adopt, after public hearings, ambient air quality standards applicable to any designated air quality control region or portions thereof within such State and within one hundred and eighty days thereafter, and from time to time as may be necessary, adopts a plan for the implementation, maintenance, and enforcement of such standards of air quality adopted, and if such standards and plan are established in accordance with the letter of intent and if the Secretary determines that such State standards are consistent with the air quality criteria and recommended control techniques issued pursuant to section 107; that the plan is consistent with the purposes of the Act insofar as it assures achieving such standards of air quality within a reasonable time; and that a means of enforcement by State action, including authority comparable to that in subsection (k) of this section, is provided, such State standards and plan shall be the air quality standards applicable to such State. If the Secretary determines that any revised State standards and plan are consistent with the purposes of this Act and this subsection, such standards and plan shall be the air quality standards applicable to such State.

[(2) If a State does not (A) file a letter of intent or (B) establish air quality standards in accordance with paragraph (1) of this subsection with respect to any air quality control region or portion thereof and if the Secretary finds it necessary to achieve the purpose of this Act, or the Governor of any State affected by air quality standards established pursuant to this subsection petitions for a revision in such standards, the Secretary may after reasonable notice and a conference of representatives of appropriate Federal departments and agencies, interstate agencies, States, municipalities, and industries involved, prepare regulations setting forth standards of air quality consistent with the air quality criteria and recommended control techniques issued pursuant to section 107 to be applicable to such air quality control region or portions thereof. If, within six

months from the date the Secretary publishes such regulations, the State has not adopted air quality standards found by the Secretary to be consistent with the purposes of this Act, or a petition for public hearing has not been filed under paragraph (3) of this subsection, the Secretary shall promulgate such standards.

[(3) If at any time prior to thirty days after standards have been promulgated under paragraph (2) of this subsection, the Governor of any State affected by such standards petitions the Secretary for a hearing, the Secretary shall call a public hearing for the purpose of receiving testimony from State and local pollution control agencies and other interested parties affected by the proposed standards, to be held in or near one or more of the places where the air quality standards will take effect, before a hearing board of five or more persons appointed by the Secretary. Each State which would be affected by such standards shall be given an opportunity to select a member of the hearing board. Each Federal department, agency, or instrumentality by the

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Secretary shall be given an opportunity to select one member of the hearing board and not less than a majority of the hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. The members of the board who are not officers or employees of the United States, while participating in the hearing conducted by such hearing board, or otherwise engaged in the work of such hearing board, shall be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, of the United States Code for persons in the Government service employed intermittently. At least thirty days prior to the date of such hearing notice of such hearing shall be published in the Federal Register and given to parties notified of the conference required in paragraph (2) of this subsection. On the basis of the evidence presented at such hearing, the hearing board shall within ninety days unless the Secretary determines a longer period is necessary, but in no event longer than one hundred and eighty days, make findings as to whether the standards published

or promulgated by the Secretary should be approved or modified and transmit its findings to the Secretary. If the hearing board approves the standards as published or promulgated by the Secretary, the standards shall take effect on receipt by the Secretary of the hearing board's recommendations. If the hearing board recommends modifications in the standards as published or promulgated by the Secretary, the Secretary shall promulgate revised regulations setting forth standards of air quality in accordance with the hearing board's recommendations which will become effective immediately upon promulgation.

[(4) Whenever, on the basis of surveys, studies and reports, the Secretary finds that the ambient air quality of any air quality control region or portion thereof is below the air quality standards established under this subsection, and he finds that such lowered air quality results from the failure of a State to take reasonable action to enforce such standards, the Secretary shall notify the affected State or States, persons contributing to the alleged violation, and other interested parties of the violation of such standards. If such failure does not cease within one hundred and eighty days from the date of the Secretary's notification, the Secretary—

[(i) in the case of pollution of air which is endangering the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

[(ii) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law, or, at the request of the Governor of such State, shall request the Attorney

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General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

[In any suit brought under the provisions of this subsection the court shall receive in evidence a transcript of the proceedings of

the hearing provided for in this subsection, together with the recommendations of the hearing board and the recommendations and standards promulgated by the Secretary, and such additional evidence, including that relating to the alleged violation of the standards, as it deems necessary to complete review of the standards and to determination of all other issues relating to the alleged violation. The court, giving due consideration to the practicability and to the technological and economic feasibility of complying with such standards, shall have jurisdiction to enter such judgment and orders enforcing such judgment as the public interest and the equities of the case may require.

[(5) In connection with any hearings under this section no witness or any other person shall be required to divulge trade secrets or secret processes.

[(6) Nothing in this subsection shall prevent the application of this section to any case to which subsection (a) of this section would be otherwise applicable.

[(d) (1) (A) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

[(B) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Secretary shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges

(causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the

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judgment of the Secretary, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

[(C) The Secretary may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis or reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Secretary shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

[(D) Whenever the Secretary, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Secretary of Health, Education, and Welfare shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Secretary shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the rep-

resentative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subparagraph shall apply only to a foreign country which the Secretary determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this subparagraph.

[(2) The agencies called to attend such conference may bring such persons as they desire to the conference. The Secretary shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal report with respect to the matters before the conference, including data and conclusions or findings (if any); and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Secretary shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

[(3) Following this conference, the Secretary shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air

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pollution subject to abatement under this Act; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

[(e) If the Secretary believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Secretary shall allow at least six months

from the date he makes such recommendations for the taking of such recommended action.

[(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Secretary is reasonably calculated to secure abatement of such pollution has not been taken, the Secretary shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Secretary. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Secretary shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Department of Health, Education, and Welfare. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

[(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Secretary concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

[(3) The Secretary shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a

reasonable time (not less than six months) to secure abatement of such pollution.

[(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken, the Secretary—

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[(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subparagraph (D) of subsection (d) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

[(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

[(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

[(i) Members of any hearing board appointed pursuant to subsection (f) who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of

such board, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

[(j) (1) In connection with any conference called under this section, the Secretary is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Secretary such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Secretary shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Secretary may prescribe, and shall be filed with

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the Secretary within such reasonable period as the Secretary may prescribe, unless additional time be granted by the Secretary. No person shall be required in such report to divulge trade secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code.

[(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Secretary for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Secretary may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

[(3) It shall be the duty of the various United States attorneys,

under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

[(k) Notwithstanding any other provision of this section, the Secretary, upon receipt of evidence that a particular pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and finding that appropriate State or local authorities have not acted to abate such sources, may request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to immediately enjoin any contributor to the alleged pollution to stop the emission of contaminants causing such pollution or to take such other action as may be necessary.

[STANDARDS TO ACHIEVE HIGHER LEVEL OF AIR QUALITY

[SEC. 109. Nothing in this title shall prevent a State, political subdivision, intermunicipal or interstate agency from adopting standards and plans to implement an air quality program which will achieve a higher level of ambient air quality than approved by the Secretary.]

Research Relating to Air Pollution Effects

Sec. 107. (a) In carrying out research pursuant to this Act, the Secretary shall give special emphasis to research on the short- and long-term effects of air pollution agents or combinations of such agents on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

(1) to improve knowledge of the contribution of air pollution agents to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

(2) to improve knowledge of the short- and long-term effects of air pollution agents on the environment, including effects on soils, water, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate as well as effects on esthetic, recreation, and economic values.

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(b) In carrying out the provisions of this section the Secretary shall, as may be necessary—

(1) conduct epidemiological studies of the effects of air

pollution agents or combination of such agents on mortality and morbidity;

(2) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects, including carcinogenic, teratogenic, and mutagenic effects of air pollution agents or combination of such agents;

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

(4) utilize the authority contained in section 103 (b) (1) through (4) of this Act; and

(5) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this section shall be in addition to, and not duplicative of, research and studies of such other Federal agencies.

(c) In entering into contracts under this section, the Secretary is authorized to contract for a term not to exceed ten years in duration. For the purposes of this subsection, there are authorized to be appropriated $15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this Act.

(d) No research, demonstrations, experiments, or other such work shall be carried out, contracted for, sponsored, or authorized under this Act after the effective date of this subsection, unless all information, uses, products, processes, patents, and other developments resulting from such work will (with such exception and limitation, if any, as the Secretary may find to be necessary in the public interest and he publishes his finding) be available to the general public.

Air Quality Control Regions

Sec. 108. (e) For the purpose of implementing applicable ambient air quality standards and for administrative and other purposes, the Secretary, after consultation with appropriate State and local authorities, shall, within ninety days after enactment of this section, designate any interstate and major intrastate air quality control region which he deems necessary and appropriate. Any such designation shall be based on jurisdictional boundaries, urban-industrial concentrations, existing levels of ambient air quality, and other factors necessary to provide for effective implementation of ambient air quality standards. The Secretary shall immediately notify the Governor or Governors of the af-

fected State or States of such designation. Any area of any State which is not a part of a region designated by the Secretary pursuant to this Act, including regions designated prior to enactment of this subsection, shall be considered an air quality control region for the purpose of this Act. The Governor of a State may subdivide such areas into two or more air quality control regions for the purpose of developing implementation plans pursuant to this Act.

(b) All designations of air quality control regions made pursuant to this Act shall be reviewed periodically and modified, if necessary, by the Secretary, after consultation with the appropriate State and local authorities in the affected region and in any States and regions

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adjoining the State or affected region, to insure the application of the most effective and timely means of protecting and enhancing air quality. In no event shall such review be less frequent than once every five years.

Air Quality Criteria and Control Techniques

Sec. 109. (a) (1) The Secretary shall, within thirty days after enactment of this section and from time to time thereafter, publish in the Federal Register a list of air pollution agents or combination of such agents—

(A) which have, or may be expected to have, an adverse effect on public health or welfare;

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

(C) for which air quality criteria requisite for the protection of public health and welfare are planned.

The Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies and within twe've months after such publication, develop and issue to the States such criteria.

(2) Such criteria shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of an air pollution agent or combination of such agents in the ambient air, in varying quantities.

(3) Such criteria, to the extent practicable, shall include information on—

(A) those variable factors which of themselves or in combination with other factors may alter the effects on public health and welfare of any air pollution agent or combination of such agents, including, but not limited to, atmospheric conditions;

(B) the types of any air pollution agent or combination of such agents which, when present in the atmosphere, may interact to produce an effect on public health and welfare; and

(C) any known or anticipated effects associated with the presence of any air pollution agent or combination of such agents in the ambient air, including, but not limited to, effects on soils, water, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, as well as effects on economic values.

(b) (1) Simultaneously with the issuance of criteria, the Secretary shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on pollution control techniques, which information shall include data relating to the technology and costs of emission control. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) The Secretary shall also, from time to time, issue information on pollution control techniques for air pollution agents or combinations of such agents subject to the provisions of sections 114 and 115 of this Act.

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(c) Any air quality criteria or information on air pollution control techniques issued under this Act by the Secretary prior to the enactment of this subsection shall continue in effect. The Secretary shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this Act.

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

National Air Quality Standards and Goals

Sec. 110. (a) (1) Within thirty days after the date of enactment of this section, the Secretary shall publish in the Federal Register, in accordance with section 553 of title 5 of the United States Code, proposed national ambient air quality standards for any air pollution agent or combination of such agents for which air quality criteria have been issued prior to the date of enactment of this section. He shall, after a reasonable time for interested persons to submit written comments thereon, promulgate such proposed national ambient air quality standards with such modifications as he deems appropriate. Such promulgation shall occur no later than ninety days after the initial publication of such proposed national ambient air quality standards.

(2) With respect to any air pollution agent or combination of such agents for which air quality criteria and information and control techniques are issued subsequent to enactment of this section, the Secretary shall publish, simultaneously with the issuance of such criteria and information, proposed national ambient air quality standards for any such pollution agent or combination of such agents. The procedure provided for in paragraph (1) of this subsection shall apply.

(3) National ambient air quality standards, proposed and promulgated to paragraphs (1) and (2) of this subsection, shall be ambient air quality standards the attainment and maintenance of which are necessary to protect the health of persons. Such standards shall be revised, as necessary, in the same manner as promulgated.

(b) Simultaneously with the initial publication of proposed national ambient air quality standards pursuant to subsection (a) of this section, the Secretary shall publish proposed national ambient air quality goals the attainment and maintenance of which are necessary to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of such air pollution agent or combination of such agents in the ambient air, including, but not limited to, adverse effects on soils, water, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, as well as effects on economic values. Such national ambient air quality goals shall be published and promulgated in the same manner as prescribed in subsection (a) of this section for proposed national ambient air quality standards. Such goals shall be revised as necessary, in the same manner as promulgated.

Implementation Plans

Sec. 111. (a) (1) After the promulgation of national ambient air quality standards and national ambient air quality goals, or revisions thereof under section 110 of this Act, for any air pollution agent or

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combination of such agents, each State shall, after reasonable notice and public hearings, adopt and submit to the Secretary, within nine months after such promulgation, a plan for implementation, maintenance, and enforcement of such standards and goals in each air quality control region designated or established pursuant to this Act. Unless a separate public hearing is provided, each State shall consider adoption of ambient air quality standards which are more restrictive than the national ambient air quality standards at the hearing required by this paragraph.

(2) The Secretary shall, within four months after the date required for such submission, act to approve or to disapprove such plan or portion thereof. The Secretary shall approve such plan, or any portion thereof, if he determines that it—

(A) provides for the attainment of such national ambient air quality standards within three years from the date of approval of such plan;

(B) includes emission requirements, schedules and timetables of compliance, and such other measures as necessary to insure attainment of any applicable ambient air quality standard and goal;

(C) includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Secretary;

(D) includes, to the extent necessary, appropriate procedures, including, but not limited to, land-use and air and surface transportation controls and permits, for insuring that any source of air pollution agents or combination of such agents will be located, operated, and for other than moving sources, designed, constructed, and equipped in such a way that such sources will not interfere with implementation, maintenance, and enforcement of any applicable air quality standard and goal;

(E) contains adequate provisions for intergovernmental

cooperation, including measures necessary to insure that emissions of such agents or combination of such agents from sources located in one air quality control region will not cause or contribute to a violation of such air quality standards or prevent attainment of such air quality goals in any other air quality control region or portion thereof;

(F) provides (i) that any person who owns, leases, operates, or controls any stationary source subject to the provisions and requirements of such implementation plan shall be required to furnish to the appropriate State agency periodic reports on the nature and amounts of emissions of any air pollution agent or combinations of such agents from such source, and (ii) that such reports shall be correlated by the State agency with any emission requirements or standards established pursuant to this Act which reports shall be part of the public record and available at reasonable times for public inspection;

(G) provides necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, including requirements for installation of monitoring equipment and methods on sources subject to emis-

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sion requirements; periodic reporting on the nature and amounts of emissions; and authority comparable to that in section 303 of this Act, and contingency plans to implement such authority as determined by the Secretary;

(H) provides, to the extent necessary, for a program of periodic inspection and testing of motor vehicles, as authorized by section 208 of this Act;

(I) provides for revision, after public hearings, of such plan from time to time as may be necessary to take account of revisions of such ambient air quality standards and goals or availability of improved or more expeditious methods of achieving such standards and goals; and

(J) identifies the air quality control region to which such plan applies including the boundaries of such region if it is one resulting from a subdivision under section 108(a) of this Act.

(3) Each approved plan, or portion thereof, for implementation, maintenance, and enforcement of such standards and goals

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shall be the implementation plan applicable to such air quality control region.

(b) The Secretary may, wherever he determines necessary, extend the period for submission of any portion of any plan for implementation of any national ambient air quality goal, for a period not to exceed eighteen months from the date otherwise required for submission of such plan.

(c) The Secretary shall, after consideration of any State hearing record promptly prepare and publish proposed regulations setting forth such a plan, or portion thereof, for such quality air control region if (1) a State fails to submit, for any air quality control region, or portion thereof, a plan for implementation, maintenance, and enforcement of ambient air quality standards and goals within the time prescribed, or (2) the plan, or portion thereof, submitted for any such region is determined by the Secretary not to be in accordance with the requirements of this section. If such State held no public hearing associated with adoption of an implementation plan, the Secretary shall provide opportunity for such hearing within such region on any proposed regulation for such region. The Secretary shall, within six months after the date required for submission of such plans, promulgate any such regulations unless, prior to such promulgation, the subject State has adopted and submitted a plan which the Secretary determines to be in accordance with the requirements of this section. A plan promulgated by the Secretary for any air quality control region shall be the plan applicable to such region in the same manner as if such plan had been adopted by the subject State and approved by the Secretary pursuant to subsection (a) of this section and shall remain in effect until such State submits a plan and it is approved under this section.

(d) Ambient air quality standards and implementation plans adopted by States and submitted to the Secretary pursuant to this Act prior to enactment of this section shall remain in effect, unless the Secretary determines that such air quality standards and implementation plans, or portions thereof, are not consistent with the applicable requirements of this Act and will not provide for the attainment of national ambient air quality standards in the time required by this Act. If the Secretary so determines, he shall, within ninety days after

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promulgation of any national ambient air quality standards pur-

suant to section 110(a)(1) of this Act, notify the appropriate State or States and specify in what respects changes are needed to meet the additional requirements of this Act, including requirements to imp'ement ambient air quality goals. If such changes are not adopted by the State or States after public hearings and within six months after such notification, the Secretary shall promulgate such changes pursuant to subsection (c) of this section.

(e) (1) Whenever, the Secretary or his authorized representative finds new information developed from surveys, studies, investigation, or reports, or any information otherwise made available to him, that, in any air quality control region, an approved or promulgated implementation plan will be, or has been, substantially inadequate to achieve national ambient air quality standards promulgated pursuant to this Act, the Secretary shall notify the appropriate State or States of such new information and shall allow the appropriate State or States an opportunity to respond. If such State or States fails to respond within ninety days after receipt of such notice, or if such response is inadequate, the Secretary shall revise and promulgate such plan within four months, in accordance with provisions of section 553 of title 5 of the United States Code. Such revision may include an extension of the period required to obtain the quality of air established by any national ambient air quality standard established pursuant to this Act, except that such extension shall not exceed one year. No further extension shall be granted pursuant to this provision and no extension shall affect any emission requirement, timetable, or schedule of compliance adopted as a part of the plan subject to revision unless such requirement, timetable, or schedule is the subject of such revision.

(2) Any revised plan promulgated pursuant to this subsection shall be the plan applicable to such region in the same manner as if such plan had been adopted by the State and approved by the Secretary pursuant to this section.

(f) (1) No later than one year before the expiration of the period for the attainment of ambient air of the quality established for any national ambient air quality standard pursuant to section 110 of this Act, the Governor of a State in which is located all or part of an air quality control region designated or established pursuant to this Act may file a petition in the district court of the United States for the district in which all or a part of such air quality control region is located against the United States for relief from the effect of such expiration (A) on such region or por-

tion thereof, or (B) on a person or persons in such air quality control region. In the event that such region is an interstate air quality control region or portion thereof, any Governor of any State which is wholly or partially included in such interstate region shall be permitted to intervene for the presentation of evidence and argument on the question of such relief.

(2) Any action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and appeal shall be to the Supreme Court. Proceedings before the three judge court, as authorized by this subsection, shall take precedence

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on the docket over all other causes of action and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(3) (A) In any such proceeding the Secretary shall intervene for the purpose of presenting evidence and argument on the question of whether relief should be granted.

(B) The court, in its discretion, may permit any interested person residing in any affected State to intervene for the presentation of evidence and argument on the question of relief.

(4) The court, in view of the paramount interest of the United States in achieving ambient air quality necessary to protect the health of persons shall grant relief only if it determines such relief is essential to the public interest and the general welfare of the persons in such region, after finding—

> *(A) that substantial efforts have been made to protect the health of persons in such region; and*
>
> *(B) that means to control emissions causing or contributing to such failure are not available or have not been available for a sufficient period to achieve compliance prior to the expiration of the period to attain an applicable standard; or*
>
> *(C) that the failure to achieve such ambient air quality standard is caused by emissions from a Federal facility for which the President has granted an exemption pursuant to section 119 of this Act.*

(5) The court, in granting such relief shall not extend the period established by this Act for more than one year and may grant renewals for additional one year periods only after the filing of a new petition with the court.

(6) The Secretary, in consultation with any affected State or States, shall take such action as may be necessary to modify any implementation plan or formulate any new implementation plan for the period of such extension.

(7) No extension granted pursuant to this section shall effect compliance with any emission requirement, timetable, schedule of compliance, or other element of any implementation plan unless such requirement, timetable, schedule of compliance, or other element of such plan is the subject of the specific order extending the time for compliance with such national ambient air quality standard.

State Standards and Plans to Achieve Greater Air Quality Control

Sec. 112. Nothing in this title shall be construed as preventing a State, political subdivision thereof, intermunicipal or interstate agency from adopting, within the time provided in sections 110 and 111 of this Act, or revising after such time, ambient air quality standards and implementation plans, including emission requirements, to implement an air quality program which will (A) attain and maintain a higher level of air quality than is specified in any national ambient air quality standard promulgated pursuant to this Act, or (B) attain and maintain the level of air quality specified in any national ambient air quality standard within a shorter period of time than required by this Act, or from adopting with the time

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provided in section 114 or section 115 of this Act, or revising after such time, emission standards more stringent than those established by the Secretary.

New Source Standards of Performance

Sec. 113. (a) For the purpose of this section, the term—

(1) "stationary sources" means those buildings, structures, facilities, or installations which, regardless of location, emit or may emit any air pollution agent or combination of such agents in amounts which cause or contribute to the endangerment of the public health and welfare;

(2) "new source" means any stationary source, the construction or modification of which is begun on or after the

effective date of any standard of performance established under this section applicable to such source;

(3) "construction" means any placement, assembly, or installation of facilities or equipment (including contractural obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparatory work at such premises;

(4) "modification" means any construction (other than pollution abatement facilities as determined by the Secretary or appropriate State agency) which may alter the nature or may increase the amounts of air pollution agents or combination of such agents emitted by a stationary source; and

(5) "owner or operator" means any person who owns, leases, operates, controls, or supervises a new source.

(b) (1) The Secretary shall, within ninety days after the enactment of this section and from time to time thereafter, publish in the Federal Register a list of categories of stationary sources which shall be subject to standards of performance established under this section.

(2) Within one hundred and twenty days after the publication of such a list or revision thereof, the Secretary shall publish in the Federal Register proposed regulations, in accordance with section 553 of title 5 of the United States Code, establishing Federal standards of performance for new sources. Such standards shall reflect the greatest degree of emission control which the Secretary determines to be achievable through application of the latest available control technology, processes, operating methods, or other alternatives. The Secretary shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within ninety days after such publication, such standards with such modifications as he deems appropriate and shall notify the States of such promulgation. The Secretary may from time to time revise such standards following the precedure required by this subsection for promulgation of such standards.

(3) Standards of performance or revisions thereof shall become effective upon promulgation.

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

(c) Prior to publishing any lists or regulations pursuant to this section the Secretary shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts and Federal departments and agencies.

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

(e) (1) The Secretary shall, within ninety days after enactment of this section, promulgate regulations, in accordance with section 553 of title 5 of the United States Code, establish a procedure for certification of compliance with any standard of performance promulgated pursuant to this section. Such procedure shall include—

(A) provisions for preconstruction review of the locations and design of any new source;

(B) provisions for performance tests within a reasonable time after commencement of operation of any new source;

(C) methods to identify violations and enforce compliance with such standards of performance; and

(D) methods to insure that any such new source shall not prevent implementation of national ambient air quality standards or national ambient air quality goals promulgated under this title.

(2) Except as provided in subsection (f) of this section, upon application by any owner or operator of any new source the Secretary shall, within ninety days after application for certification, act on such application. If the Secretary determines, in accordance with the provisions of this section, that such source complies with the applicable standards of performance promulgated under this section he shall certify such source.

(f) (1) Each State may develop and submit to the Secretary a procedure for certification of compliance with any standard of performance for any new source located in such State. If the Secretary finds the State procedure is at least equal to the requirements established pursuant to subsection (d) of this section, he shall delegate certification authority provided in this section to such State for other than new sources owned and operated by the United States.

(2) Nothing in this section shall prohibit the Secretary from enforcing any applicable standard of performance promulgated pursuant to this section, including suspending any State certification granted pursuant to this section.

(g) Every owner or operator of a new source subject to standards established under this section shall (1) establish and maintain such records, make such reports, install, use, and maintain monitoring equipment or methods, and provide such information as the Secretary may reasonably require to enable him to determine whether such source is in compliance with this section and regulations established thereunder, and (2) upon request of an officer or employee, duly designated by the Secretary, permit such officer or employee at reasonable times, to have access to and copy such records, and to inspect any such monitoring equipment or method. Except for emission data, upon a showing satisfactory to the Secretary by such owner or operator that such records, reports, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Secretary shall consider such record, report, or information

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or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when revelant in any proceeding under this Act.

(h) (1) After the effective date of standards of performance promulgated under this section, it shall be unlawful—

(A) for any owner or operator to operate any new source without certification issued under this section; or

(B) for any owner or operator of any certified new source to operate such source in violation of any standard of performance applicable to such source; or

(C) for any owner or operator to fail or refuse to permit access to, or copying of, records or to fail to make reports, or to fail to install, use, or maintain, monitoring equipment or methods, or provide information required under this section.

(2) The district courts of the United States shall have jurisdiction to enjoin violations of paragraph (1) (A) or paragraph (1) (C) of this subsection. In any action to restrain violations, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(3) Any owner or operator who violates paragraph (1) (A) or paragraph (1) (C) of this subsection shall be liable to a civil

penalty of not more than $5,000 for each offense which shall be assessed by the Secretary after an opportunity for a public hearing. Each day of violation shall be a separate offense.

(4) Any violation of paragraph (1)(B) of this subsection shall be subject to abatement pursuant to section 116 of this Act. If any owner or operator of a certified new source does not initiate abatement within seventy-two hours as provided in any order issued pursuant to section 116(a)(2) of this Act to abate such violation, the Secretary shall suspend any applicable Federal or State certification. Failure to suspend operation of such source after such suspension shall be considered a knowing violation for purposes of section 116 of this Act and shall, upon conviction, subject the owner or operator to a fine of at least $5,000 for each day of operation after such suspension.

National Emission Standards—Selected Air Pollution Agents

Sec. 114. (a) For the purpose of this section the term—

(1) "selected air pollution agent" means any air pollution agent or combination of such agents which is not subject to the provisions of sections 109 and 110 or 115 of this Act, and which has or may be expected to have an adverse effect on public health and the presence of which, in the ambient air, results from emissions from categories of stationary sources as defined pursuant to the provisions of section 113 of the Act; and

(2) "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(b) The Secretary shall, within one hundred and eighty days after the enactment of this section and from time to time thereafter, compile

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and publish in the Federal Register a list of selected air pollution agents or combinations of agents for which he deems that emission standards are appropriate under this section in order to carry out the purposes of this Act.

(c)(1) The Secretary shall from time to time publish in the Federal Register, in accordance with section 553 of title 5 of the United States Code, proposed regulations establishing emission standards for such air pollution agents or combination of such agents included in such list. Such standards shall be designed to insure that emissions of such pollution agent or combination of

agents from any such stationary source shall not endanger public health. The Secretary shall afford interested persons an opportunity for written comment on such proposed regulations, and, after considering such comments, shall promulgate, within one hundred and twenty days after such publication, such emission standards with such modifications as he deems appropriate. The Secretary may distinguish among classes, types, and sizes within categories of such sources for the purpose of this section.

(2) Any emission standard promulgated pursuant to this section shall be reviewed and, if appropriate, revised in the same manner as initially promulgated.

(3) Such standards shall become effective on the date specified in such promulgation, but in no event more than twenty-four months after such promulgation.

(4) The Secretary may, upon application filed by any owner or operator, waive, subject to such terms and conditions as he may prescribe, the application of any emission standard established under this section to any stationary source of such owner or operator if he finds, and publishes his finding, that such source has achieved the greatest degree of air pollution control currently technically feasible and that the health of persons is not adversely affected by such waiver. Such waiver shall be subject to the review provision of section 308 of this Act.

(d) Prior to publishing any lists or regulations pursuant to this section the Secretary shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts and Federal departments and agencies.

(e) After the effective date of the standards promulgated under this section, every owner or operator of a stationary source to which such standards apply shall (1) establish and maintain such records, make such reports, install, use, and maintain monitoring equipment or methods and provide such information as the Secretary may reasonably require to enable him to determine whether such source is in compliance with this section and the standards established hereunder and (2) upon request of an officer or employee duly designated by the Secretary permit such officer or employee, at reasonable times, to have access to and copy such records, and to inspect any such monitoring equipment or method. Except for emission data, upon a showing satisfactory to the Secretary by such owner or operator that such records, reports, or information or particular part thereof, if made public, would

divulge trade secrets or secret processes of such owner or operator, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code,

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except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(f) (1) Beginning on and after the effective date of any emission standard promulgated under this section, it shall be unlawful for any owner or operator to operate any stationary source in violation of such standard.

(2) Beginning on and after the effective date of any emission standard promulgated under this section, it shall be unlawful for any owner or operator of a stationary source subject to such standard to fail or refuse to permit access to, or copying of, records, or to fail to make reports, or to fail to install, maintain, and use monitoring equipment or methods, or provide information required by the Secretary pursuant to subsection (d) of this section.

(g) Any violation of paragraph (1) of subsection (f) of this section shall be subject to abatement pursuant to section 116 of this Act.

(h) Any owner or operator who violates paragraph (2) of subsection (f) of this section shall be liable to a civil penalty of not more than $5,000 for each offense which, after an opportunity for a hearing, shall be assessed by the Secretary.

(i) Any failure of such owner or operator, to comply with an order issued pursuant to section 116(a)(2) of this Act shall be considered a knowing violation for purposes of section 116(b) of this Act, and shall, upon conviction, subject such owner or operator to a fine of at least $5,000 for each day of operating after such suspension.

(j) (1) Each State may develop and submit to the Secretary a procedure for enforcement of any emission standards established under this section for any stationary source located in any State. If the Secretary finds the State procedure is adequate to implement the purposes of this section he shall delegate enforcement authority provided in this section to such State.

(2) Nothing in this subsection shall prohibit the Secretary

from enforcing any applicable emission standard promulgated pursuant to this section.

National Emissions Standards—Hazardous Air Pollution Agents

Sec. 115. (a) (1) The Secretary shall, within ninety days after the enactment of this section and from time to time thereafter, publish in the Federal Register a list of those air pollution agents or combination of such agents which available material evidence indicates are hazardous to the health of persons and which shall be subject to a prohibition or emission standard established under this section.

(2) Within one hundred and eighty days after the publication of such list, or revision thereof, the Secretary, in accordance with section 553 of title 5 of the United States Code, shall publish a proposed prohibition of emissions of each such agent or combination of agents from any stationary source together with a summary of such evidence and a notice of a public hearing within thirty days. As soon as possible after such hearing, but not later than six months after such publication, the Secretary shall pro-

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mulgate such prohibition, unless, based upon a preponderence of evidence adduced at such hearing, he finds within such period and publishes his finding—

(A) that such agent is not hazardous to the health of persons; or

(B) that a departure from such prohibition for stationary source will not be hazardous to the health of persons.

(3) If the Secretary finds under paragraph (2) (A) of this subsection that such agent is not hazardous to the health of persons, he shall immediately publish an emission standard in accordance with the procedures established under section 114 of this Act.

(4) If the Secretary finds under paragraph (2) (B) of this subsection that a departure from such prohibition for any stationary source will not be hazardous to the health of persons, he shall immediately promulgate an emission standard for such agent or combination of agents for any such stationary source to protect the health of persons.

(5) When proposing or promulgating any prohibition or emission standard under this section, the Secretary shall designate

the category or categories of stationary sources to which the prohibition or emission standard shall apply.

(6) Any prohibition or emission standard established pursuant to this section shall become effective upon promulgation.

(7) Prior to publishing any lists or regulations pursuant to this section the Secretary shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts and Federal departments and agencies.

(b) For purposes of this section, an air pollution agent which is 'hazardous to the health of persons' is one whose presence, chronically or intermittently, in trace concentrations in the ambient air, either alone or in combination with other agents, causes or will cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible damage to health.

(c) After the effective date of any prohibition or emission standard promulgated under this section, every owner or operator of a stationary source subject to such prohibition or standard shall (1) establish and maintain such records, make such reports, install, use, and maintain monitoring equipment or methods and provide such information as the Secretary may reasonably require to enable him to determine whether such source is in compliance with this section and the prohibition or standards established hereunder, and (2) upon request of an officer or employee duly designated by the Secretary permit such officer or employee, at reasonable times to have access to and copy such records, and to inspect any such monitoring equipment or method. Except for emission data, upon a showing satisfactory to the Secretary by such owner or operator that such records, reports, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

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(d) Upon evidence of a violation of any prohibition or emission standard established pursuant to this section, the Secretary shall

bring a civil suit on behalf of the United States against the owner or operator of such source which causes or contributes to such violation for immediate abatement, including a permanent or temporary injunction, restraining order, or any other appropriate order, in the appropriate United States district court for the district in which such stationary source is located or in which the owner or operator thereof has his principal office or resides. Each court shall have jurisdiction to provide such relief as may be appropriate. In any such action, the findings of the Secretary under subsection (a) of this section shall be presumed correct.

(e) Any prohibition or emission standard promulgated pursuant to this section shall be subject to review, and if appropriate, revision in the same manner as initially promulgated.

Federal Enforcement

Sec. 116. (a) (1) The violation of any implementation plan, including any emission requirements therein, or any emission standard, or standard of performance established pursuant to this Act is prohibited.

(2) Whenever, on the basis of surveys, studies, investigations, reports or any information otherwise made available to him, the Secretary or an authorized representative of the Secretary finds (A) that any person is in violation of, or is causing or contributing to a violation of, an implementation plan, including any emission requirement therein, and that, in the judgment of the Secretary, a State has not satisfactorily administered its implementation plan, particularly the requirements of section III (a) (2) (G); or (B) that any person is in violation or is causing or contributing to a violation of standards of performance established under section 113 of this Act; or (C) that any person is in violation of an emission standard established under section 114 of this Act; he shall promptly issue an order in writing to such person requiring such person to initiate abatement of such violation as soon as possible and within a time to be prescribed therein. In the case of a violation of any emission requirement, emission standard, or standard of performance, such time shall not exceed seventy-two hours from the receipt of such notice. A copy of the order shall be sent to the State air pollution control agency of the State or States in which the violation occurred, or is occurring, and, in any case where the order issued is to a corporation, to appropriate corporate officers. All such orders shall state with reasonable specificity the nature of the violation. Nothing in this

section shall affect the authority of the Secretary pursuant to section 303 of this Act.

(3) For the purpose of (A) establishing any ambient air quality standard, prohibition, emission standard, or standard of performance pursuant to this Act; or (B) making any investigation under this Act of any building, structure, monitoring equipment, or other facility subject to any air quality standard, implementation plan, emission requirement, prohibition, emission standard, waiver, or standard of performance established under this Act, the Secretary or his authorized representative shall have a right of entry to, upon, or through such building, structure, or facility, upon presentation of his credentials. The Secretary shall, when appropriate, require any person who owns,

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leases, operates, or controls such building, structure, or other facility to install, use and maintain monitoring equipment and methods and to sample any emission subject to emission requirements, emission standards, or standards of performance in accordance with such methods, at such locations, at such intervals, and in such manner as the Secretary shall prescribe and to report such samples to the Secretary as he may prescribe and such report shall be public.

(4) The Secretary shall institute a civil action for appropriate relief, including a permanent or temporary injunction, in the district court of the United States for the district in which a person subject to any implementation plan, emission requirement, emission standard, or standard of performance established under this Act is located or resides or is doing business, whenever such person—

> *(A) violates or fails or refuses to comply with any order issued under paragraph (2) of this subsection (any such order shall be in force unless and until the court determines that the interests of the public are best served by staying such order and that there is a substantial likelihood that such party will prevail on the merits of the matters subject to review); or*
>
> *(B) violates or fails or refuses to comply with any requirement established under section 113, 114, or 115 of this Act; or*
>
> *(C) refuses to furnish any information, data, or reports or refuses to install, maintain, or use monitoring equipment*

or methods required by the Secretary or appropriate State agency in furtherance of the provisions of this Act; or

(D) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this Act.

(5) Any person subject to an order issued pursuant to paragraph (2) of this subsection and who undertakes compliance with such order shall not be foreclosed from instituting in the United States district court for the district in which the alleged violation occurred an action against the Secretary to challenge such order.

(b) Any person (A) who knowingly violates any schedule or timetable of compliance or emission requirement included in any implementation plan, or (B) who knowingly violates any (i) emission standard established under section 114 of this Act, or (ii) prohibition or emission standard established under section 115 of this Act, or (C) who knowingly violates any standard of performance under section 113, or (D) who knowingly violates or fails or refuses to comply with any order issued under this section, shall, upon conviction, be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

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PRESIDENT'S AIR QUALITY ADVISORY BOARD AND ADVISORY COMMITTEES

SEC. [110] 117. (a)(1) There is hereby established in the Department of Health, Education, and Welfare an Air Quality Advisory Board, composed of the Secretary or his designee, who shall be Chairman, and fifteen members appointed by the Presi-

dent, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall be eligible for reappointment within one year after the end of his preceding term, unless such term was for less than three years.

(b) The Board shall advise and consult with the Secretary on matters of policy relating to the activities and functions of the Secretary under this Act and make such recommendations as it deems necessary to the President.

(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory commitees as hereinafter authorized shall be provided from the personnel of the Department of Health, Education, and Welfare.

(d) In order to obtain assistance in the development and implementation of the purposes of this Act including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Secretary shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

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(e) The members of the Board and other advisory committees appointed pursuant to this Act who are not officers or employees of the United States while attending conferences or meeting of the Board or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may

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be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

[COOPERATION BY FEDERAL AGENCIES TO CONTROL AIR POLLUTION FROM FEDERAL FACILITIES

[SEC. 111. (a) It is hereby declared to be the intent of Congress that any Federal department or agency having jurisdiction over any building, installation, or other property shall, to the extent practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency in preventing and controlling the pollution of the air in any area insofar as the discharge of any matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area.

[(b) In order to control air pollution which may endanger the health or welfare of any persons, the Secretary may establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any building, installation, or other property shall, before discharging any matter into the air of the United States, obtain a permit from the Secretary for such discharge, such permits to be issued for a specified period of time to be determined by the Secretary and subject to revocation if the Secretary finds pollution is endangering the health and welfare of any persons. In connection with the issuance of such permits, there shall be submitted to the Secretary such plans, specifications, and other information as he deems relevant thereto and under such conditions as he may prescribe. The Secretary shall report each January to the Congress the status of such permits and compliance therewith.]

Control of Pollution From Federal Facilities

Sec. 118. (a) Each agency of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any real property or facility, including any vehicle or vessel, which it owns and operates, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollution agents or combinations of such agents, shall provide leadership in carrying out the policy and purposes of this Act and shall comply with the requirements of this Act in the same manner as any person must so comply in the administration of such property, facility, or activity. Except for new sources subject to standards of performance under subsection (c) of section 113 of this Act, the President may exempt any such property, facility, vehicle, or vessel of any such agency of the executive branch from such compliance if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President

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making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption. Exemptions for agencies of the legislative or judicial branches shall be by act of Congress.

(b) The Governor, the attorney general or any citizen of any State in which any Federal property, facility, or activity is located may seek to enforce the provision of this section pursuant to section 304 of this Act.

TITLE II—NATIONAL EMISSION STANDARDS ACT

SHORT TITLE

SEC. 201. This title may be cited as the "National Emission Standards Act."

ESTABLISHMENT OF STANDARDS

[SEC. 202. (a) The Secretary shall by regulation, giving ap-

propriate consideration to technological feasibility and economic costs, prescribe as soon as practicable standards, applicable to the emission of any kind of substance, from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons, and such standards shall apply to such vehicles or engines whether they are designed as complete systems or incorporate other devices to prevent or control such pollution.

[(b) Any regulations initially prescribed under this section, and amendments thereto, with respect to any class of new motor vehicles or new motor vehicle engines shall become effective on the effective date specified in the order promulgating such regulations which date shall be determined by the Secretary after consideration of the period reasonably necessary for industry compliance.**]**

Sec. 202. (a) Except as provided in subsection (b) of this section:

(1) The Secretary shall by regulation prescribe, as soon as practicable and in accordance with the provisions of this section, standards applicable to the emission of all known substances of any kind or description from any class or classes of (A) vessels, aircraft, commercial vehicles and new noncommercial vehicles, and (B) vessel, aircraft, commercial vehicle, and new non-commercial-vehicle engines, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons. Such standards shall apply to such vessels, aircraft, vehicles, or engines whether they are designed as complete systems or incorporate other devices to prevent or control such pollution.

(2) Consistent with the requirements of subsection (b) of this section, any such standards for the control of emissions from new vehicles and new vehicle engines shall be established without regard to the source of power or the propulsion system used to obtain such emission reduction.

(3) Regulations or standards issued by the Secretary under this title prior to the enactment of this section shall continue in effect until revised by the Secretary consistent with the purposes of this Act.

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(4) Regulations shall be published, in accordance with section

553 of title 5 of the United States Code, in the Federal Register and interested persons shall be given an opportunity to submit written comments thereon. After considering such comments, the Secretary shall promulgate such regulations with such modifications as he deems appropriate consistent with the purposes of this section. The Secretary shall from time to time review and, when appropriate, revise such regulations in accordance with this section.

(5) Any regulation promulgated under this section and revisions thereof shall become effective on the date or dates specified in such regulations, which date or dates shall be determined by the Secretary after consideration of the period reasonably necessary from a technical standpoint of compliance.

(6) Prior to publishing any list or regulation pursuant to this section the Secretary shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts and Federal departments and agencies.

(b) (1) Beginning with model year 1975 or after January 1, 1975, any new light duty vehicle or any new light duty vehicle engine, as determined by the Secretary, shall be required, for purposes of certification under this Act, to meet emission standards established by the Secretary for those air pollution agents for which emission standards were in effect prior to the date of enactment of the National Air Quality Standards Act of 1970, which at a minimum, shall represent a 90 per centum reduction from allowable emissions for 1970, model year vehicles or engines.

(2) Beginning on the first day of the fifth year following publication of criteria for air pollution agents for which no emission standards were in effect prior to the date of enactment of the National Air Quality Standards Act of 1970, any new light duty vehicle or any new light duty vehicle engine, as determined by the Secretary, shall be required, for purposes of certification under this Act to meet emission standards established by the Secretary which at a minimum represent a 90 per centum reduction from the average of such pollution agents as actually measured from 1970 model year vehicles or engines. The Secretary shall publish the emission standards required by this paragraph for such pollution agents simultaneously with promulgation of applicable national ambient air quality standards. The Secretary shall promulgate such emission standards in final form within ninety days, unless during such period and after opportunity for comment he

finds that a departure from such standards is necessary to achieve and maintain national ambient air quality standards in any air quality control region. If the Secretary makes such a finding, he shall immediately promulgate in final form revised standards which will achieve and maintain national ambient air quality standards in any air quality control region.

(3) Emission standards established by the Secretary to implement the requirements of paragraph (1) of this subsection shall be based on measurement techniques which shall be established within one hundred and eighty days after enactment of this subsection and, for paragraph (2), not later than ninety days after publication of appropriate criteria.

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(4) (A) Within twenty-four months, but no later than twelve months before the effective date of any emission standard established pursuant to this subsection, any manufacturer or manufacturers may file with the Secretary an application requesting a suspension of the effective date of such standard for one year only. Upon receipt of such application, the Secretary shall promptly hold a public hearing to enable such manufacturer or manufacturers to present information relevant to the implementation of such standard. The Secretary, in his discretion, may permit any interested person to intervene to present information relevant to the implementation of such standards. The filing of such an application under this paragraph shall not operate as a stay of such standard.

(B) In connection with any hearing under this subsection, the Secretary may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he shall administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce papers, books, and documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(C) Within six months after receipt of the application for such suspension, the Secretary shall issue a decision granting or refusing such suspension. The Secretary shall grant such suspension only if he determines that (i) such suspension is essential to the public interest and the general welfare of the United States, (ii) all good faith efforts have been made to meet the standards established by this subsection, and (iii) the applicants have established by a preponderance of the evidence that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, even with the full application of section 309 of this Act. If the Secretary grants such suspension, the Secretary shall, at the same time, promulgate interim standards for emissions which reflect the greatest degree of emission control which is achievable by application of technology which the Secretary determines is available for such vehicle for the year for which the relief has been granted.

(D) Any decision issued, or interim standard promulgated, pursuant to this paragraph shall be subject to judicial review by the United States Court of Appeals for the District of Columbia upon the filing in such court within thirty days from the date of such decision of a petition by the manufacturer or manufacturers or any interested person thereby praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary and thereupon the Secretary shall certify and file in such court the record upon which

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the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. The court shall hear such petition on the record made before the Secretary. The findings of the Secretary shall be presumed correct. The court shall affirm a decision of the Secretary to grant a one-year suspension or reverse a decision not to grant such suspension only after determining that (i) such suspension is essential to the public interest and the general welfare of the United States, (ii) all good faith efforts have been made to meet the standards established by this subsection, and (iii) the applicants have established by a preponderance of the evidence that effective control technology, processes, operating methods, or other alternatives are not available or have

not been available for sufficient period of time to achieve compliance prior to the effective date of such standards, even with the full application of section 309 of this Act. The judgment of the court shall be subject to review only by the Supreme Court of the United States upon a writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(E) The commencement of any proceeding under subparagraph (D) of this paragraph shall not operate as a stay of any decision of the Secretary, or any interim standard promulgated by the Secretary, unless and until the court determines that the interests of the public are best served by a stay of such decision or interim standard and that there is a substantial likelihood that the appellant will prevail on the merits of the matter subject to review. Proceedings before the court, as authorized by this subsection, shall take precedence over all other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(F) Nothing in this subsection shall extend the effective date of any emission standard established pursuant to this subsection for more than one year.

(5) Nothing in this subsection shall be construed to prohibit the Secretary from exercising his authority under subsection (a) of this section.

(6) In the event a new power source or propulsion system for new vehicles or new vehicle engines is submitted for certification pursuant to this Act, the Secretary shall determine, prior to certification, that such source shall comply with the requirements of this subsection, and shall not cause or contribute to a violation of national ambient air quality standards.

(c) The Secretary shall, before publishing any regulation or revisions thereof, pursuant to subsection (a) of this section, consult with (1) the Federal Aviation Administrator with respect to aircraft and aircraft engines in order to assure appropriate consideration of aircraft safety and (2) the Secretary of the department in which the Coast Guard is operating with respect to vessels and vessel engines in order to insure appropriate consideration of vessel safety and navigation. The Secretary of Defense may exempt, for a period of not to exceed one year, military vessels and aircraft from the application thereto of such regulations upon determining that such exemption is necessary for the purpose of national security. He shall notify the Congress of such exemption.

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PROHIBITED ACTS

[SEC. 203. (a) The following acts and the causing thereof are prohibited—

[(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the manufacture for sale, the sale, or the offering for sale, or the introduction or delivery for introduction into commerce, or the importation into the United States for sale or resale, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this title which are applicable to such vehicle or engine unless it is in conformity with regulations prescribed under this title (except as provided in subsection (b));

[(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 207; or

[(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser.

[(b)(1) The Secretary may exempt any new motor vehicle or new motor vehicle engine, or class thereof, from subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

[(2) A new motor vehicle or new motor vehicle engine offered for importation by a manufacturer in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Secretary of Health, Education, and Welfare may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this title. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by

such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Secretary of Health, Education, and Welfare under this title.

[(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall not be subject to the provisions of subsection (a).]

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Sec. 203. (a) The following acts and the causing thereof are prohibited—

(1) (A) in the case of a manufacturer of new vessels, new aircraft, new vehicles, new vessel engines, new aircraft engines, or new vehicle engines for distribution in commerce, to sell or to offer to sell or to deliver for introduction into commerce any such vessel, aircraft, vehicle, or engine, or (B) in the case of any person, the importation into the United States of any such vessel, aircraft, vehicle, or engine, which is manufactured or imported after the effective date of regulations promulgated under section 202 which are applicable to such vessel, aircraft, vehicle, or engine, unless it is in conformity with such regulations (except as provided in subsection (b) of this section) and section 206 of this Act;

(2) in the case of an owner or operator of a vessel, aircraft, or commercial vehicle, or a vessel, or commercial vehicle, or aircraft engine, the use in commerce of such vessel, aircraft, vehicle, or engine after the effective date of such regulations which are applicable thereto, unless it is in conformity with such regulations (except as provided in subsection (b) of this section) and section 206 of this Act;

(3) for any person to fail or refuse to permit access to, or copying of, records or to fail to make reports or provide information required under this title; or

(4) for any person to knowingly remove or render inoperative other than for purposes of maintenance, repair or replacement, any device or element of design installed on or in any such vessel, aircraft, or vehicle or such vessel, aircraft,

or vehicle engine in compliance with such regulations prior to its sale and delivery to the ultimate purchaser or during its term of use, other than to install a device or system certified pursuant to section 211.

"(b) (1) The Secretary may exempt any new vessel, aircraft, or vehicle, or new vessel, aircraft, or vehicle engine, from the requirements of subsection (a) of this section upon such terms and conditions as he may find necessary, for the purpose of research, investigations, studies, demonstrations, or training.

(2) A new vessel, aircraft, or vehicle, or a new vessel, aircraft, or vehicle engine imported, or offered for importation, by any person in violation of subsection (a) shall be refused admission into the United States. The Secretary of the Treasury and the Secretary may, by joint regulation, provide for deferring final determination as to such admission and authorize the delivery of such a vessel, aircraft, vehicle, or engine offered for import to the owner or operator or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such vessel, aircraft, vehicle, or engine will be brought into conformity with the standard, requirements, and limitations applicable to it under this title. The Secretary of the Treasury shall, if such vessel, aircraft, vehicle, or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary of the Treasury within ninety days after the date of notice of such refusal or such

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additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly, or indirectly, in the sale, to the ultimate purchaser, of a new vessel, aircraft, vehicle, or engine that fails to comply with applicable standards of the Secretary.

INJUNCTION PROCEEDINGS

SEC. 204. (a) The district courts of the United States shall have jurisdiction to restrain violations of [paragraph (1), (2), or (3) of] section 203 [(a).] *of this title.*

[(b)] Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas

for witnesses who are required to attend a district court in any district may run into any other district.

(b) If the Secretary determines that any State has adequate authority to restrain violations of section 203 of this title, he shall delegate to such State any such enforcement authority under this title, except that nothing in this subsection shall operate to prohibit the Secretary from also acting at any time to restrain such violations.

PENALTIES

[SEC. 205. Any person who violates paragraph (1), (2), or (3) of section 203(a) shall be subject to a fine of not more than $1,000. Such violation with respect to sections 203(a)(1) and 203(a)(3) shall constitute a separate offense with respect to each new motor vehicle or new motor vehicle engine.]

Sec. 205. Any person who violates section 203(a) of this title shall be subject, upon conviction, to a civil penalty of not more than $10,000. Any such violation of paragraph (1), (2) or (4) of section 203(a) of this title shall constitute a separate offense with respect to each vessel, aircraft, vehicle, or engine subject to its requirements.

CERTIFICATION AND PRODUCTION MODEL TESTING

[SEC. 206. (a) Upon application of the manufacturer, the Secretary shall test, or require to be tested, in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by such manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 202 of this title. If such vehicle or engine conforms to such regulations the Secretary shall issue a certificate of conformity, upon such terms, and for such period not less than one year, as he may prescribe.

[(b) Any new motor vehicle or any motor vehicle engine sold by such manufacturer which is in all material respects substantially the same construction as the test vehicle or engine for which a certificate has been issued under section (a), shall for the purposes of this Act be deemed to be in conformity with the regulations issued under section 202 of this title.]

Sec. 206. (a)(1) The Secretary shall test or require to be tested, in such manner as he deems appropriate, any new vehicle,

or new vehicle engine, or class thereof, submitted by a manufacturer to determine

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whether such vehicle, or engine conforms with the regulations prescribed under section 202 of this title. If such vehicle, or engine conforms to such regulations, the Secretary shall issue a certificate of conformity upon such terms and conditions, and for such period as he may prescribe.

(2) The Secretary shall develop and publish in the Federal Register, after consultation with, as appropriate, the Secretary of Transportation, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Defense and other interested Federal agencies, regulations simultaneously with those published under section 202 of this title, in accordance with section 553 of title 5 of the United States Code, concerning the testing of such vessels, aircraft, and such vessel or aircraft engines. Such regulations shall provide, among other things, such technical data and other information as shall be required in conducting such tests. The Secretary shall provide an opportunity for interested persons to submit written comments thereon. He shall thereafter promulgate such regulations with such modifications as he deems appropriate and such regulations shall become effective upon publication.

(3) Any such vehicle or vehicle engine sold by such manufacturer which is in all material respects substantially the same construction as the test vehicle or vehicle engine for which a certificate has been issued under paragraph (1) of this subsection and is in effect, shall for the purposes of this Act be deemed to be in conformity with the regulations issued under section 202 of this title, except as provided in subsection (b) of this section and section 207 of this Act.

(b) (1) The Secretary shall establish and inform the manufacturers of (1) methods and procedures to be used in making tests under this section; and (2) methods and procedures to be used in determining the relationship of test results to applicable regulations established under section 202.

(2) In order to determine whether any new vessels, vehicles, or aircraft, or new vessel, vehicle, or aircraft engines under the control or custody of a manufacturer conform with the regulations with respect to which a certificate of conformity was issued the Secretary is authorized to test or require testing of any such

vessels, vehicles, aircraft, or engines, or class thereof, while in the control or custody of the manufacturer.

(3) If, based on such test, the Secretary determines that such vessels, vehicles, aircraft, or engines do not conform with the regulations with respect to which the certificate of conformity was issued, he shall notify the manufacturer and he may by notice suspend or revoke such certificate in whole or in part. Such suspension or revocation shall apply in the case of any new vessels, vehicles, or aircraft or any new vessel, vehicle, or aircraft engines manufactured for sale after the date of such notification (or manufactured before such date if still in the control or custody of the manufacturer), and until such time as the Secretary finds that such vessels, vehicles, aircraft, or engines manufactured by the manufacturer conforms to such regulations. If, during any period of suspension or revocation the Secretary finds that such vessels, vehicles, aircraft, or engines or class thereof, conforms to such regulations, he shall by notice reinstate such certificate.

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(4) (A) Within thirty days of receipt of notice of such suspension or revocation under this subsection or denial of a request for certification under subsection (a), the manufacturer may file with the Secretary an application for a public hearing for review thereof. Upon receipt of such application, the Secretary shall promptly hold a hearing to enable such manufacturer to present information relating thereto. The filing of an application for review under this paragraph shall not operate as a stay of such suspension, revocation, or denial.

(B) In connection with any hearing under this subsection, the Secretary may sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure

to obey such order of the court may be punished by such court as a contempt thereof.

(C) Any decision issued by the Secretary under this subsection shall be subject to judicial review by the United States court of appeals for the circuit in which such manufacturer resides or has his principal place of business, or the United States Court of Appeals for the District of Columbia, upon the filing in such court within thirty days from the date of such decision of a petition by any person aggrieved thereby praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Secretary and thereupon the Secretary shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. The court shall hear such petition on the record made before the Secretary. The findings of the Secretary shall be presumed correct. The court may affirm, vacate, or modify any decision of the Secretary and, when appropriate, issue such process as may be necessary, or may remand the proceedings to the Secretary for such further actions as it may direct. The judgment of the court shall be subject to review only by the Supreme Court of the United States upon a writ of certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of a proceeding under this subparagraph shall not operate as a stay of the final decision of the Secretary, unless and until the court determines that the interests of the public are best served by a stay of such final decision and that there is a substantial likelihood that the petition as will prevail on the merits of the matter subject to review.

(D) For purposes of enforcement of this title, authorized representatives of the Secretary, upon presenting appropriate credentials to the manufacturer, his agent in charge, or dealer are authorized (i) to enter, at reasonable time, any factory, warehouse, establishment, or other facility of such manufacturer or dealer, in or at which such vessels, vehicles, aircraft, or engines are manufactured, assembled,

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or constructed, or are held for introduction into commerce or are held for sale or resale after such introduction; and (ii) to inspect, at reasonable times and in a reasonable manner, such factory, warehouse, establishment, or other facility and the vessels, air-

craft, and engines therein. Each such inspection shall be commenced and completed with reasonable promptness.

(F) Every manufacturer of such vessel, vehicle, aircraft, or engine shall furnish to the dealer or, if appropriate, to the ultimate purchaser at the time of delivery thereof by such manufacturer a certification that such vessel, vehicle, aircraft, or engine conforms to all applicable standards issued under this title. Such certification shall be in such forms as to be clearly visible and shall be permanently affixed thereto.

(c) With respect to vessels and vessel engines, the testing, certification, and related actions required by this section shall be conducted by the Secretary of the department in which the Coast Guard is operating pursuant to laws administered by him. With respect to aircraft and aircraft engines, the testing, certification, and related actions required by this section shall be conducted by the Secretary of Transportation pursuant to the Federal Aviation Act of 1958, as amended. With respect to vessels and aircraft and the engines thereof being manufactured for the Department of Defense, that Department shall conduct the testing, certification, and related actions required by this section.

Vehicle and Vehicle Engine Compliance Testing

Sec. 207. (a) Every manufacturer of a new vehicle or new vehicle engine, or both, subject to the regulations issued under section 202 of this title, shall, prior to the delivery thereof to the dealer, or if appropriate, the ultimate purchaser, test or cause to be tested such vehicles or engines in accordance with good engineering practices and such regulations as the Secretary may prescribe under this section, to ascertain that such vehicles or engines will conform to the applicable certificate issued under this title for the lifetime emissions of such vehicle or engine. No certificate shall be issued for such vehicles or engines under this title unless the manufacturer has such a testing program.

(b) The Secretary shall establish methods and procedures for making tests under this section and inform the manufacturers with respect thereto by regulation promulgated in accordance with section 553 of title 5 of the United States Code. Such regulations adopted by the Secretary prior to enactment of the National Air Quality Standards Act of 1970 shall continue in force until modified by him consistent with the purposes of this section.

(c) Every new vehicle or new vehicle engine introduced in commerce for sale or resale shall be warranted by the manufacturer to

be designed, built, and equipped so as to conform with applicable regulations issued under this title, and shall further be warranted to remain in conformity with such regulations for the lifetime of such vehicles or engines if properly maintained, serviced, and operated. Operation for fifty thousand miles shall be taken as the basis for the lifetime of a vehicle engine under this section.

As a condition to the obligation of manufacturers to correct deficient performance, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicles or engines (a) to provide

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reasonable evidence of the time when such vehicles or engines were first placed in regular service and (b) to provide reasonable evidence that prescribed maintenance, adjustment, and service requirements and schedules have been observed. The manufacturer shall furnish with each vehicle or engine written instructions for the proper maintenance, adjustment, operation, and service by the owner or operator. Such warranty shall apply to the vehicle on behalf of the ultimate purchaser and subsequent purchasers thereof. In addition, the manufacturer shall include on a label or tag permanently affixed to such vehicle or engine such information relating to control of vehicle emissions and compliance with this Act as the Secretary shall prescribe by regulation. The actual cost to the manufacturer of such systems or devices and installation thereof and warranty shall be disclosed in accordance with the provision of the Act of July 7, 1958 (15 U.S.C. 1231–1233).

(d) (1) The Secretary shall conduct, or cause to be conducted, such inspections, tests, studies, research, and investigations as may be necessary to determine whether any class of vehicles or engines continue to conform to the regulations prescribed under section 202 of this Act after such vehicles or engines have been in operation for such period or number of miles as the Secretary may deem appropriate. Any such inspection of a vehicle or engine, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

(2) If through testing, inspection, studies, or other investigation of statistically representative samples of any class or category of vehicles or vehicle engines, or by other means, the Secretary determines that such class or category of vehicles or engines,

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operated under proper maintenance and use, do not conform to the regulations prescribed under section 202 of this Act, or the certification issued under this title, he shall immediately notify the manufacturer thereof of such determination of nonconformity. The Secretary shall publish such notice and, with reasonable specificity, information concerning his determination of nonconformity in the Federal Register as promptly as possible. The Secretary shall within thirty days after such notice is issued afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing or in writing, with regard to such determination of nonconformity. The Secretary shall, within a reasonable time, but in no event more than sixty days from the date of notice of nonconformity, order the manufacturer to provide prompt notification of such nonconformity to the ultimate purchaser and, if known, subsequent purchasers of all such vehicles or vehicle engines included within the class or category unless the Secretary, on the basis of all the facts and evidence in the public record of such proceedings, shall conclude that the class or category of vehicles or engines is in conformity with the regulation and certification and publish such conclusion together with the reasons therefor in the Federal Register as promptly as possible.

(e) (1) Every manufacturer of vehicles or engines subject to the provisions of this section shall furnish notification of any defect in such vehicle or engine produced by him, which he discovers during

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the term of any warranty required by this title, and which he determines, in good faith, causes or will cause such vehicle or engine to be in nonconformity with such certification or regulations, to the ultimate purchaser or subsequent purchaser thereof (where known to the manufacturer) within a reasonable time not to exceed sixty days after discovery of such defect.

(2) The notification required by this section shall be—

(A) by any expeditious process, which, for those purchasers who do not initially respond must include notice by certified mail to the last-known address of the ultimate purchaser of such vehicle or engine, and to any subsequent purchasers, if known, to whom has been transferred any warranty required by this title;

(B) by certified mail to the dealer of such vehicle or engine; and

(C) by such other expeditious and reasonable means of informing purchasers thereof not known to the manufacturer.

(3) The notification to such purchasers provided for in this subsection shall contain a clear description of the nonconformity, a statement of measures to be taken to remedy such nonconformity, and a commitment of the manufacturer to cause such nonconformity to be remedied at no cost to the owner.

(4) The manufacturer shall furnish, at the Secretary's request, copies of such notification to him.

(f) The United States district court shall have jurisdiction to restrain violations of this section or any order of the Secretary issued under this section.

[FEDERAL ASSISTANCE IN DEVELOPING VEHICLE INSPECTION PROGRAMS

[SEC. 209. The Secretary is authorized to make grants to appropriate State air pollution control agencies in an amount up to two-thirds of the cost of developing meaningful uniform motor vehicle emission device inspection and emission testing programs except that (1) no grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program; and (2) no such grant shall be made unless the Secretary of Transportation has certified to the Secretary that such program is consistent with any highway safety program developed pursuant to section 402 of title 23 of the United States Code.]

State Grants

Sec. 208. (a) The Secretary is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program; and

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Secretary that such program is consistent with any highway safety program developed pursuant to section 402 of title 23 of the United States Code.

(b) Such grants shall be in addition to, and shall not supplant, existing funding programs of a State for air pollution control.

RECORDS AND REPORTS

[SEC. 207. (a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and regulations thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee at reasonable times to have access to and copy such records.

[(b) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (a), which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.]

Sec. 209. (a) Every manufacturer of a vessel, vehicle, aircraft, or vessel, vehicle, or aircraft engine subject to the provisions of this title shall establish and maintain such records, make such reports, perform such tests, and provide such information as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this title and regulations thereunder, and shall, upon request of an authorized representative of the Secretary, permit such officer or employee at reasonable times to have access to and copy such records.

(b) Except for emission data, upon a showing satisfactory to the Secretary by the person filing such records and reports that such records or reports or portion thereof, if made public, would

divulge trade secrets or secret processes of such person, the Secretary shall consider such records or reports or portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such records or reports may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act.

STATE STANDARDS

SEC. 208. (a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from [new motor vehicles or new motor vehicle engines subject to this title] *commercial vehicles, new noncommercial vehicles, vessels, aircraft, or commercial vehicle, new noncommercial ve-*

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hicle, vessel, or aircraft engines subject to this title, or to control or prohibit for the purpose of emission control, the sale or use of any fuel or fuels which are registered in accordance with section 212(a) of this Act, except where such State demonstrates, after public hearings, to the satisfaction of the Secretary that more restrictive emissions for vehicles or engines are required to implement national ambient air quality standards for any air quality control region within such State. Except to implement such more restrictive standards, no State shall require certification, inspection, or any other approval relating to the control of emissions from any commercial vehicle, new noncommercial vehicle, vessel, or aircrafe or commercial vehicle, new noncommercial vehicle, vessel, or aircraft engine as condition precedent to the initial retail sale to an ultimate purchaser, titling (if any), or registration of such vehicle, vessel, aircraft, or engine.

(b) The Secretary shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this title.

(c) Nothing in this title shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of [registered or licensed motor vehicles.] *any aircraft, vessels, or registered or licensed vehicles, particularly such controls, regulations, or restrictions necessary to achieve compliance with national ambient air quality standards and national ambient air quality goals established pursuant to title I of this Act.*

Used Vehicles

Sec. 211. (a)(1) As soon as possible, after the enactment of this section, the Secretary shall promulgate Federal standards of performance for emission control devices or systems designed to prevent or reduce air pollution emissions from used motor vehicles.

(2) As soon as possible after promulgation of the standards required in paragraph (1), the Secretary shall develop and publish in the Federal Register, in accordance with section 553 of title 5 of the United States Code, regulations providing for certification and warranty of such devices or systems. Such regulations shall consider the technical feasibility of installing and maintaining in proper condition such devices or systems or used vehicles or engines or classes thereof. The Secretary shall afford a reasonable opportunity for interested persons to submit written comments thereon and, after consideration thereof, shall promulgate such regulations which shall become effective upon promulgation.

(b) (1) No manufacturer of a device for application on used vehicles shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale, any such device manufactured after the effective date of the

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standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

(2) Upon application of the manufacturer, the Secretary shall so certify a used vehicle device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary shall test or require such testing of the device as to standards of performance and for such other purposes as may

be appropriate. If the Secretary determines that the device is satisfactory after consideration of the design, installation, operation, reliability, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(c) After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(1) for the manufacturer of any device subject to such standards and regulations to sell or offer for sale, or to distribute for sale any such device unless it is in all material respects substantially the same as the appropriate test device certified pursuant to this section; or

(2) for any person, prior to the sale or delivery of a device subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified device or element of design of such device; or

(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section.

(d) The district courts of the United States shall have jurisdiction to restrain violators of subsection (c) of this section. Actions to restrain such violators shall be brought by, and in, the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Any person who violates clause (2) of subsection (c) of this section shall be liable to a civil penalty of not more than $1,000 for each violation. Each violation shall be a separate offense. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the

amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

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[REGISTRATION OF FUEL ADDITIVES

[SEC. 210. (a) The Secretary may by regulation designate any fuel or fuels (including fuels used for purposes other than motor vehicles), and after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel may deliver any such fuel for introduction into interstate commerce or to another person who, it can reasonably be expected, will deliver such fuel for such introduction unless the manufacturer of such fuel has provided the Secretary with the information required under subsection (b) (1) of this section and unless any additive contained in such fuel has been registered with the Secretary in accordance with subsection (b) (2) of this section.

[(b) For the purposes of this section the Secretary shall require (1) the manufacturer of such fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of such additive or additives in the fuel; and the purpose in the use of such additive; and (2) the manufacturer of any such additive to notify him as to the chemical composition of such additive or additives as indicated by compliance with clause (1) above, the recommended range of concentration of such additive, if any, the recommended purpose in the use of such additive, and to the extent such information is available or becomes available, the chemical structure of such additive or additives. Upon compliance with clauses (1) and (2), including assurances that any change in the above information will be provided to the Secretary, the Secretary shall register such fuel additive.

[(c) All information reported or otherwise obtained by the Secretary or his representative pursuant to subsection (b), which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of such section 1905, except that such information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or when relevant in any proceeding under this title.

Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

[(d) Any person who violates subsection (a) shall forfeit and pay to the United States a civil penalty of $1,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Secretary may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection, and he shall have authority to determine the facts upon all such applications.

[(e) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.]

Regulation of Fuels

Sec. 212. (a) The Secretary may by regulation designate any fuel or fuels for use in vehicles and engines and, after such date or dates as may be prescribed by him, no manufacturer or processor of any

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such fuel may introduce such fuel into commerce unless the Secretary has registered such fuel in accordance with subsection (b) of this section.

(b) (1) For the purpose of registration of fuels, the Secretary shall require—

(A) the manufacturer of such fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of such additive or additives in the fuel; and the purpose-in-use of such additives; and

(B) the manufacturer of any such additive to notify him as to the chemical composition of such additive or additives as indicated by compliance with clause (A) of this paragraph, the description of any analytical technique that can be used to detect and measure such additive in fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and the chemical structure of such additive or additives.

(2) The Secretary shall issue test procedures and protocols to

determine potential public health effects, including, but not limited to, carcinogenic, teratogenic, or mutagenic effects, and may require that manufacturers of fuels and additives submitted for registration to conduct tests consistent with such procedures and protocols. The results of such tests shall not be considered confidential.

(3) The Secretary may also require the manufacturer of any fuel or fuel additive to furnish such information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health.

(4) Upon compliance with the provision of this subsection, including assurances that the Secretary will receive changes in the information required, the Secretary shall register such fuel.

(c) (1) The Secretary may from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation control or prohibit the introduction into commerce of any fuel or fuels for use in vehicle engines if the combustion or evaporation of such fuel produces emissions which endanger the public health or welfare, or if such emissions prevent operation of effective systems for the control of emissions from any vehicle or vehicle engine which the Secretary finds would otherwise conform to standards promulgated pursuant to section 202 of this Act.

(2) Except for fuels the combustion or evaporation of which produce emissions that endanger the public health, the Secretary shall, after public hearings and prior to controlling or prohibiting the introduction into commerce of any fuel, find and publish such finding that control or prohibition of such fuel is necessary for the achievement of an effective program of emission control to meet the standards established by section 202(b) of this Act or that such control or prohibition is necessary to achieve an economic alternative in emissions control over the lifetime of the vehicle as established in section 207 of this Act, or that such control or prohibition is necessary for the effective use of an emission control device certified pursuant to section 211

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of this Act, or that such control or prohibition is necessary to protect the general welfare.

(3) The Secretary shall not prohibit the use of any fuel unless

he finds, and publishes such finding, that such prohibition would not cause the use of any other fuel which will produce emissions which will endanger the public health or welfare to the same or greater degree.

(4) In obtaining information under this subsection the Secretary may sign and issue subpenas for the deposition of relevant persons and the production of relevant records, reports, and documents, and administer oaths. In case of contumacy or refusal to tary may sign and issue subpoenas for the deposition of relevant obey a subpoena served upon any person under this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such a person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. Upon a showing satisfactory to the Secretary by the person filing or submitting such information that such information or portion thereof, if made public, would divulge trade secrets or secret processes of such person, the Secretary shall consider such information or portion thereof confidential for the purposes of section 1905 of title 18 of the United States Code, except that such information may be disclosed to other officers or employees of the United States concerned with carrying out this Act or when relevant in any proceeding under this title. The Secretary shall make available any such information which is not so considered confidential and which will contribute to scientific or public understanding of the relationship between the components of such fuels and their contribution to the problem of air pollution.

(d) Any person who violates subsection (a) or (b) of this section shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Secretary may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the fact upon all such applications.

(e) Regulations issued under this section and section 211 shall be published in the Federal Register, in accordance with section

553 of title 5 of the United States Code, and shall afford interested persons a reasonable period to submit written comments thereon.

[NATIONAL EMISSIONS STANDARDS STUDY

[SEC. 211. (a) The Secretary shall submit to the Congress, no later than two years after the effective date of this section, a comprehensive report on the need for and effect of national emission standards for stationary sources. Such report shall include: (A) information regarding identifiable health and welfare effects from single emission sources; (B) examples of specific plants, their location, and the con-

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taminant or contaminants which, due to the amount or nature of emissions from such facilities, constitute a danger to public health or welfare; (C) an up-to-date list of those industries and the contaminant or contaminants which, in his opinion, should be subject to such national standards; (D) the relationship of such national emission standards to ambient air quality, including a comparison of situations wherein several plants emit the same contaminants in an air region with those in which only one such plant exists; (E) an analysis of the cost of applying such standards; and (F) such other information as may be appropriate.

[(b) The Secretary shall conduct a full and complete investigation and study of the feasibility and practicability of controlling emissions from jet and piston aircraft engines and of establishing national emission standards with respect thereto, and report to Congress the results of such study and investigation within one year from the date of enactment of the Air Quality Act of 1967, together with his recommendations.]

Development of Low-Emission Vehicles

Sec. 213. In order to encourage research and promote the development of low-emission vehicles the Secretary is authorized to—

(1) prescribe special low-emission standards for any class or classes of vehicles or engines not subject to section 202(e);

(2) provide testing procedures to determine if vehicles and engines meet such standards; and

(3) certify vehicles or engines meeting such standards as low-emission vehicles or engines for the purpose of this section.

[DEFINITIONS FOR TITLE II

[SEC. 212. As used in this title—

[(1) The term 'manufacturer' as used in sections 203, 206, 207, and 208 means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

[(2) The term 'motor vehicle' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

[(3) The term 'new motor vehicle' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term 'new motor vehicle engine' means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser.

[(4) The term 'dealer' means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

[(5) The term 'ultimate purchaser' means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

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[(6) The term 'commerce' means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.]

Definition

Sec. 214. For the purpose of this title, the term—

(1) "vessel" means every description of self-propelled watercraft or other artificial contrivance used, or capable of being used, as a means of commercial transportation in water;

(2) "vessel engine" means an engine used for the propulsion of a vessel and located either therein or separated therefrom, but is intended for such use, and includes all parts, appurtenances, and accessories thereof;

(3) "aircraft" means any contrivance now known or hereinafter invented, used, or designed for navigation of, or flight in, the air;

(4) "aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and located either therein or separated therefrom, but is intended for such use and includes all parts, appurtenances, and accessories thereof;

(5) "vehicle" means any self-propelled vehicle designed for transporting persons or property on a road, street, parkway, or highway or on rails, or for agricultural use;

(6) "vehicle engine" means an engine used for the propulsion of a vehicle or motor vehicle and located therein or separated therefrom, but is intended for such use, and includes all parts, appurtenances, and accessories thereof;

(7) "new" when applied to a vessel, aircraft, or vehicle, or vessel, aircraft, or vehicle engine means that the equitable or legal title thereto has not, under applicable law, been transferred to an ultimate purchaser, except that, with respect to vessels, aircraft, or vehicles, or vessels, aircraft, or vehicle engines imported or offered for importation, such term shall mean a vessel, aircraft, or vehicle, or vessel, aircraft, or vehicle engine imported into the United States on or after the day following the date of enactment of this paragraph;

(8) "ultimate purchaser" means the first person who in good faith purchases a new vessel, aircraft, or vehicle, or a new vessel, aircraft, or vehicle engine for purposes other than resale;

(9) "commercial" means any business activity of any kind or description by any person engaged in trade or commerce;

(10) "manufacturer" means, except in section 212, any person engaged in the manufacturing or assembling of new vessels, aircraft, or vehicles, or new vessel, aircraft, or vehile engines, or importing such vessels, aircraft, vehicles, or engines for resale, or who acts for, and is under the control of, any such person in connection with the distribution of such vessels, aircraft, vehicles, or engines, but shall not include any dealer;

(11) "owner or operator" means any person who owns, leases, operates, controls, or supervises a vessel, aircraft, or vehicle or engine thereof;

(12) "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a place in a State and any place outside thereof, or within the District of Columbia or a possession of the United States, or between points in the same State but through a point outside thereof;

(13) "dealer" means any person who is engaged in the sale or the distribution of new vehicles or new vehicle engines to the ultimate purchaser.

Applicability

Sec. 215. The amendments made by sections 206(b)(4)(F), 207(c), 207(d), and 207(e) shall apply in the case of vehicles and vehicle engines manufactured after the ninetieth day after the enactment of this section.

TITLE III—GENERAL

ADMINISTRATION

SEC. 301. (a) The Secretary is authorized to prescribe such regulations as are necessary to carry out his functions under this Act. The Secretary may delegate to any officer or employee of the Department of Health, Education, and Welfare such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

(b) Upon the request of an air pollution control agency, personnel of the Public Health Service may be detailed to such agency for the purpose of carrying out the provisions of this Act. The provisions of section 214(d) of the Public Health Service Act shall be applicable with respect to any personnel so detailed to the same extent as if such personnel had been detailed under section 214(b) of that Act.

(c) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Secretary.

(d) Contracts made under this Act may be made without regard to the civil service laws and the Classification Act of 1949, as amended, 5 U.S.C. 5101, et seq. as they relate to the procurement of personal services.

DEFINITIONS

SEC. 302. When used in this Act—

(a) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(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 Act;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

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(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; or

(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.

(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.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) All language referring to adverse effects on welfare shall include but not be limited to injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to transportation.

Emergency Powers

Sec. 303. Notwithstanding any other provision of this Act, the Secretary, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollution agents or combination of such agents causing or contributing to such pollution or to take such other action as may be necessary.

Citizen Suits

Sec. 304. (a)(1) In furtherance of the purposes of this Act to protect the public health and welfare and control air pollution, the district courts of the United States shall have original jurisdiction, regardless of the amount in controversy or the citizenship of the parties, to enforce, or to require the enforcement of, any applicable schedule or timetable of compliance, emission requirement, standard of performance, emission standard, or prohibition established pursuant to this Act. Civil actions for such enforcement, or to require such enforcement, may be brought by one or more persons on their own behalf, (A) against any person, including, but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such schedule, timetable, emission requirement, standard of performance , emission standard, or prohibition, or (B) against

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the Secretary where there is alleged a failure of the Secretary to exercise (i) his authority to enforce standards or orders established under this Act; or (ii) any duty established by this Act.

(2) Nothing in this section shall affect the right of such persons as a class or as individuals under any other law to seek enforcement of such standards or any other relief.

(3) Prior to instituting any suit, under this subsection, such person or persons shall, by certified or registered mail or personal service, notify (A) the Secretary, (B) an authorized representative of the Secretary, if any, in the field office responsible for the area in which the alleged violation occurs, (C) an authorized representative of the air pollution control agency of the State in

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which the alleged violation occurs, and (D) the person, or persons alleged to be in violation of such alleged violation. Such notice shall be in accordance with regulations prescribed by the Secretary as to content and specificity. No such suit shall be filed unless such person or persons shall have afforded the Secretary, his representative, or such agency, at least thirty days from the receipt of such notice to institute enforcement proceedings under this title to abate such alleged violation; except any action under this section to abate a violation of (i) an order issued by the Secretary pursuant to section 116, (ii) clause (A) or (B) of section 113(h)(1), (iii) section 114(f)(1), or (iv) section 115, may be undertaken, after notice, without regard to the time limitations of this subsection. In any such action, the Secretary, if not a party, may intervene as a matter of right.

(b) The court in issuing any order in any action brought pursuant to subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines such action is in the public interest.

Appearance

Sec. 305. In actions instituted under this Act, attorneys appointed by the Secretary shall appear for and represent the Secretary, as provided in section 516 of title 28 of the United States Code.

Federal Procurement

Sec. 306. (a) Any person (1) required to comply with an order issued by a Federal court pursuant to this Act who fails to comply within the time period specified in such order, or (2) convicted by a Federal court for a knowing violation of any applicable schedule or timetable of compliance, emission requirement, prohibition, emission standard, or standard of performance, shall be ineligible to enter into any contract with any Federal agency for the procurement of goods, materials, and services to perform such work at or with any facilities subject to such action by the court which are owned, leased, or supervised by such person. Such ineligibility shall continue until the Secretary certifies compliance with such order, or that the condition giving rise to the violation has been corrected.

(b) The Secretary shall establish procedures to provide all such

Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

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(c) In order to further implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than one hundred and eighty days after enactment of this section cause to be issued an order (A) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (B) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

Employee Protection

Sec. 307. (a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any employee or any authorized representative of employees of any alleged violator by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, apply to the Secretary of Labor for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as

he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of that employee to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this sub-

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paragraph shall be subject to judicial review in accordance with this subsection. Violations by any person of subsection (a) of this section shall be subject to the provisions of section 116(a)(4).

(c) Whenever an order is issued under this paragraph, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

Judicial Review

Sec. 308. (a) Any interested person may file a petition against the Secretary for review (1) of any promulgated national ambient air quality standard, goal, prohibition, emission standard, standard of performance, waiver granted pursuant to section 114(c)(4) of this Act, in the United States Court of Appeals for the District of Columbia or (2) of any approved or promulgated implementation plan including any emission requirement therein, in the United States Court of Appeals for the appropriate circuit. Such petition shall be filed within thirty days from the date of such promulgation or approval, or after such date whenever it is alleged that significant new information has become available,

praying that such promulgation or approval be modified or set aside in whole or in part. Any determination or finding of the Secretary, subject to challenge under this subsection, shall be presumed correct. The court shall provide such relief as may be appropriate.

(b) The commencement of a proceeding under this subsection shall not operate as a stay of such standard, goal, plan, including any emission requirement therein, prohibition, emission standard, standard of performance, or waiver, unless and until the court determines that the party requesting such stay shows that there is a substantial likelihood that such party will prevail on the merits of the matter subject to review and that the interest of the public will not be harmed by such a stay.

(c) The judgment of the court shall be subject to review only by the Supreme Court of the United States upon a writ of certiorari or certification as provided in section 1254 of title 28 of the United States Code.

Mandatory Licensing

Sec. 309. (a) Whenever the Secretary determines in accordance with the provisions of section 554 of title 5 of the United States Code that the implementation of the requirements of section 113, 115, or 202 of this Act requires a right or rights under any United States letters patent or any trade secret or know-how not otherwise reasonably available be made available to others to facilitate compliance with such sections, he shall order the owner of such patent, trade secret, or know-how to grant to each applicant making written request therefor a nonexclusive, nontransferrable license under any such patent, patent application, trade secret, or know-how. For the purpose of this subsection, know-how shall include technical information known to the owner thereof relating to control technology, processes, operating methods, or other alternatives, including written manuals, blueprints, drawings, and specifications.

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(b) No license granted pursuant to subsection (a) shall include any restriction, except:

(1) reasonable royalties may be charged;

(2) reasonable provisions may be made to prevent the disclosure of know-how or trade secrets to third persons;

(3) reasonable provisions may be made for periodic roy-

alty payments by the licensee and inspection of the relevant books and records of the licensee by an independent auditor or other person acceptable to both licensor and licensee, who shall report to the licensor only the amount of the royalty due and payable;

(4) reasonable provisions may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties, permit the inspection of his books and records, or for disclosure of know-how or trade secrets to a third person as hereinabove provided;

(5) reasonable provisions may be made to prevent further use or disclosure by the licensee, in the event of cancellation, of know-how or trade secrets acquired by the licensee pursuant to such license.

(c) If the owner of any United States letters patent, patent application, trade secret, or know-how and any applicant for a license thereunder pursuant to subsection (a) are unable to agree upon reasonable royalties to be charged under such license or upon any other provision which may be included in such license pursuant to subsection (b), any such disagreement shall be resolved by arbitration under the rules and procedures of the American Arbitration Association then in effect.

(d) Nothing in this section shall be construed to grant an exemption from the antitrust laws of the United States or any judgments, orders, or decrees issued thereunder.

Policy Review

Sec. 310. (a) The Secretary shall review any matter relating to duties and responsibilities granted pursuant to this Act contained in any (1) detailed statement prepared by any agency or Department of the Federal Government pursuant to Public Law 91-190, and (2) proposed regulations published by any agency or Department of the Federal Government pursuant to any statutory authority.

(b) In the event the Secretary determines that such detailed statement or such proposed regulations is unsatisfactory from the standpoint of public heolth or welfare or environmental quality, the matter shall be referred to the Council on Environmental Quality for a determination and recommendation to the President which shall be made public.

OTHER AUTHORITY NOT AFFECTED

SEC. [303] *311.* (a) Except as provided in subsection (b) of this section, this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Secretary or any other Federal officer, department, or agency.

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(b) No appropriation shall be authorized or made under section 301, 311, or 314 of the Public Health Service Act for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this Act.

RECORDS AND AUDIT

SEC. [304] *312.* (a) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary of Health, Education, and Welfare and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

COMPREHENSIVE ECONOMIC COST STUDIES

SEC. [305] *313.* (a) In order to provide the basis for evaluating programs authorized by this Act and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Secretary, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's indus-

tries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this Act or applicable State law. The Secretary shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

(b) The Secretary shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this Act and other programs for the same purpose as this Act; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

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ADDITIONAL REPORTS TO CONGRESS

SEC. [306] *314*. Not later than six months after the effective date of this section and not later than January 10 of each calendar year beginning after such date, the Secretary shall report to the Congress on measures taken toward implementing the purpose and intent of this Act including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this Act; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to title II of this Act; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this Act; and (10) the reports and recommendations made by the President's Air Quality Advisory Board.

LABOR STANDARDS

SEC. [307] *315.* The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this Act shall be paid wages at rates not less than those prevailng for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 19, 1934, as amended (48 Stat. 948; 40 U.S.C 276c).

SEPARABILITY

SEC. [308] *316.* If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be effected thereby.

APPROPRIATIONS

SEC. [309] *317.* There are hereby authorized to be appropriated to carry out this Act, other than sections 103(d) and 104, $74,000,000 for the fiscal year ending June 30, 1968, $95,000,000 for the fiscal year ending June 30, 1969, [and] $134,300,000 for the fiscal year ending June 30, [1970.] *1970, $150,000,000 for the fiscal year ending June 30, 1971, $250,000,000 for the fiscal year ending June 30, 1972, and $325,000,000 for the fiscal year ending June 30, 1973.*

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SHORT TITLE

SEC. [310] *318.* This Act may be cited as the "Clean Air Act."

TITLE IV—NOISE POLLUTION

Sec. 401. This title may be cited as the 'Noise Pollution and Abatement Act of 1970.'

Sec. 402. (a) The Secretary shall establish within the Department of Health, Education, and Welfare an Office of Noise Abate-

ment and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) In conducting such investigation, the Secretary shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Secretary shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after the date of enactment of this title.

(c) In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Secretary determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Secretary to determine possible means of abating such noise.

Sec. 403. There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this title."

1.1k(3) COMMITTEE OF CONFERENCE

H.R. Rep. No. 91-1783. 91st Cong., 2d Sess. (1970)

CLEAN AIR AMENDMENTS OF 1970

December 17, 1970—Ordered to be printed

Mr. STAGGERS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 17255]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17255) to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment * * *.

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STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17255) to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The committee of conference has agreed to a substitute for both the House bill and the Senate amendment. Except for technical, clarifying, and conforming changes, the following statement explains the differences between the House bill and the substitute agreed to in conference.

Existing law and the House and Senate versions of the bill all provide that the Clean Air Act is to be carried out by the Secretary of Health, Education, and Welfare. During the period in which the committee of conference was considering the bill, all of the functions of the Secretary of Health, Education, and Welfare under the Clean Air Act were transferred, pursuant to Reorganization Plan Numbered 3 of 1970, to the Administrator of the Environmental Protection Agency. Accordingly, all references to the Secretary in the bill, in existing law, and in the statement of Managers have been changed to "Administrator," and provisions have been added authorizing the transfer of personnel of the Public Health Service to the new agency.

SECTIONS 103 AND 104. RESEARCH

The House bill would make no change in the present provisions of the Clean Air Act relating to fuel and vehicle research. The Senate amendment would make several changes in section 104 and would add a new section 107 which would call for special emphasis on research relating to effects of air pollution. In regard to section 104, the Senate amendment would provide (1) new authority for research directed toward development of methods of improving the efficiency of fuels combustion and producing synthetic or new low-pollution fuels, and (2) new authority for awarding of grants and contracts for part of the cost of programs to develop low-emission alternatives to the internal combustion engine and for payment of the cost of purchasing motor vehicles and engines for research and development and testing. In the proposed new section 107, the Administrator was directed to give special emphasis to research on the short-term and long-term effects of air pollutants, and was authorized to enter into long-term contracts to carry out such research. Proposed new section 107 also would require the Administrator to consult with other Federal agencies to insure that research conducted under such section does not duplicate their research programs.

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The conference substitute adopts the Senate provision with respect to section 104 and includes (as a new subsection to existing section 103) the provisions set forth in proposed new section 107.

SECTION 105. GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

The House bill would make no change in existing section 105 of the Clean Air Act. The Senate amendment would make several changes, the principal one being that State agencies would be eligible for the higher levels of Federal grant support currently available only to interstate and intermunicipal agencies. State agencies would eligible for such greater support only in those instances where the grant funds are to be used for a State-operated regional air pollution planning or control program. The Senate amendment would add two other new provisions to section 105. One of these provisions would authorize a reduction in payments to grantee agencies in cases where Federal employees are detailed to such agencies. The other new provision would authorize the withholding of grant funds from any agency found by the Administrator to be inadequately staffed or funded to meet its responsibilities under the Clean Air Act.

The conference agreement includes the Senate provision to provide greater support to state agencies and authority to detail Federal employees but deletes the provision for withholding grant funds. The conferees recognize that the Administrator has general authority under section 113 to act where a state is not carrying out its enforcement responsibilities.

SECTION 106. INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

The House bill would delete section 106 of the Clean Air Act. The Senate amendment would retain the provisions for Federal funding of interstate air quality planning programs but would eliminate the existing authority for the Administrator to establish interstate air quality planning commissions.

The conference substitute would modify the Senate amendment to make clear that such Federal grants would be for the purpose of developing implementation plans for designated interstate air quality control regions.

SECTION 107. AIR QUALITY CONTROL REGIONS

Under the House bill each State was declared to be an air quality control region for purposes of attaining ambient air quality standards. Interstate air quality control regions designated under existing law and interstate regions designated after enactment of this legislation would also be air quality control regions.

Under the Senate amendment, existing interstate and intrastate regions would be retained, and the Administrator could designate new interstate and intrastate regions. Any part of a State not included in a designated region would be an air quality control region, but could be subdivided into two or more regions.

The conference substitute makes it the primary responsibility of each State to assure air quality within the entire geographic area comprising such State by submitting an implementation plan for such

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State for achieving air quality standards. All interstate and intrastate regions designated prior to enactment of this legislation would remain in effect. The Administrator retains authority to designate interstate and intrastate regions and is authorized to approve the establishment by the State of instrastate regions.

SECTION 108. AIR QUALITY CRITERIA AND CONTROL TECHNIQUES

The House bill did not change the substance of the provision of existing law which requires the issuance of air quality criteria and information on control techniques. The Senate amendment proposed to establish a deadline by which criteria for certain pollutants would have to be issued and provided the Administrator with authority to establish a consulting committee to advise him on control technology.

The conference substitute substantially adopts the provisions of the Senate amendment.

SECTION 109. NATIONAL AMBIENT AIR QUALITY STANDARDS

Under the House bill the Administrator had 30 days after enactment in which to propose national ambient air quality standards for each pollutant or combination of pollutants for which criteria had been issued under existing law. Such proposed standards were to be published 30 days after the issuance of the criteria for any other pollutant or combination thereof. After allowing a reasonable time for comment on proposed standards, the Administrator was to promulgate the standards with appropriate modifications. In addition, States were authorized to adopt more stringent air quality standards than the national standards established by the Administrator.

The Senate amendment declared that national ambient air quality standards and goals were to be issued by the Administra-

tor. The standards were to be adequate to protect the health of persons. The goals were to be adequate to protect the public health or welfare from any adverse effects.

The Senate amendment called for the Administrator to promulgate proposed standards within 90 days after initial publication. Standards were to be proposed simultaneously with the issuance of criteria for pollutants (or combinations thereof) for which criteria had not been issued under existing law. Proposed national ambient air quality goals were to be published simultaneously with the publication of the proposed standards.

The Senate bill required that each State consider adoption of more stringent air quality standards than the national standards at its public hearing on the proposed implementation plan, unless a separate hearing was held for that purpose. The Senate bill permitted States, political subdivisions thereof and other specified governmental agencies to establish more stringent standards than the national standards or shorter deadlines for their attainment than three years.

The conference substitute follows the Senate amendment in establishing deadlines for the development of national ambient air quality standards. The Senate amendment was modified to provide for primary and secondary standards, the former relating to public health and the latter to public welfare.

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SECTION 110. IMPLEMENTATION PLANS

Under the House bill after promulgation of a national ambient air quality standard, each State was to hold public hearings and adopt a plan to implement such standard (or the more stringent State standard). The Administrator was to approve the plan if it assured achievement of the standard within a reasonable time and contained adequate provision for State enforcement, intergovernmental cooperation to attain standards, and revision of the plan under specified circumstances.

The House bill authorized the Administrator to propose a plan applicable to any State, if it failed to submit an acceptable implementation plan within the allotted time. The plan was to be promulgated 30 days after publication, unless the State adopted an acceptable plan or the Governor petitioned the Administrator for a hearing.

Under the Senate amendment each State was to hold public hearings and adopt a plan to implement the national ambient air

quality standards (or the more stringent State standards) and national ambient air quality goals. The Administrator was required to approve the plan if he found that it provided for attainment of the standard within three years from the date of approval of the plan. The Governor of a State, however, was authorized to petition the Federal district court to extend for a year the period for attaining a standard. The court could grant relief only upon specified showings and each one-year extension could be granted only after the filing of a new petition and making the required showings. Under the Senate bill implementation plans would also have to provide for necessary land-use and transportation controls, intergovernmental cooperation to attain standards and goals, periodic reports on emissions from specified sources, and certain other requirements.

The conference substitute follows the Senate amendment in establishing deadlines for implementing primary ambient air quality standards but leaves the States free to establish a reasonable time period within which secondary ambient air quality standards will be implemented. The conference substitute modifies the Senate amendment in that it allows the Administrator to grant extensions for good causes shown upon application by the Governors.

SECTION 111. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

SECTION 112. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Under the House bill, the Administrator would establish emission standards for classes of new stationary sources, emissions from which may contribute substantially to endangerment of public health or welfare. In setting such standards, the Administrator would consider economic and technological feasibility. The Administrator was also authorized to exempt certain sources or classes of sources for reasons specified in the bill. For standards relating to emissions which are extremely hazardous to health, the Administrator could by regulation prohibit new sources of such emissions from being constructed or

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operated, although he could grant specific exemptions. For stand-

ards relating to other emissions, the regulations were to require that new sources of such emissions be designed and equipped to maximize emission control insofar as technologically and economically feasible. The House bill also authorized States to enforce emission standards under this provision if they adopt an adequate enforcement plan. If no such plan was adopted, the Administrator would establish the enforcement plan.

Under the Senate amendment, the Administrator was to publish a list of categories of stationary sources and standards of performance applicable to such new sources. The standards of performance were to be based on the greatest emission control possible through application of latest available control technology. The Administrator was also required to establish a system of preconstruction review and certification of design and location of new sources in order to assure attainment of primary and secondary ambient air quality standards. States were authorized to conduct the certification upon submission of acceptable procedures to the Administrator. New sources would be prohibited from operating without certification or in violation of any applicable standard of performance. Under the Senate amendment if a standard of performance were violated, the Administrator could issue an abatement order and failure to initiate abatement within 72 hours would result in suspension of the certificate and subject the owner or operator to criminal penalties for operation thereafter.

The Senate amendment also provided in a separate section for the publication of a list of air pollutants (or combination thereof) which are hazardous to the health of persons. Pollutants "hazardous to the health of persons" were defined as those whose presence in trace concentrations in the ambient air will cause or contribute to specified types of damage to health. The Administrator was directed to publish proposed regulations prohibiting emissions of such pollutants from any existing or new stationary source and, after public hearing, he was to promulgate such regulations, unless upon a preponderance of the evidence, he found that the pollutant was not hazardous to the health of persons or that some amount could be emitted without endangering the health of persons. After making either of these findings, the Administrator was to publish an emission standard for such pollutant applicable to designated stationary sources.

Under the conference substitute the Administrator is directed to meet specified deadlines in publishing a list of categories of stationary sources which contribute significantly to air pollution,

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in issuing proposed Federal standards for new sources in such categories, and in finalizing such standards after receiving comments by interested persons. The conference substitute does not contain the pre-construction review and certification procedure provided for in the Senate amendment. New sources would be held to establish standards of performance, and violations of such standards would subject the owners of such sources to abatement actions under Section 113.

The conference substitute requires the Administrator, within specified deadlines, to publish a list of hazardous pollutants, to issue proposed emission standards for such pollutants, and to finalize such standards after public hearings. Emission levels must provide an ample margin of safety to assure public health protection. New sources emitting such pollutants may be constructed only if they

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meet the standards. Standards would apply to existing sources, but the Administrator may grant a waiver for up to two years for those existing sources where such period is necessary for installation of control equipment and where during such period the health of persons is protected from imminent danger by other means. Moreover, the President may exempt any new or existing stationary source for a two-year period if he finds that necessary technology is unavailable to implement standards, and that operation of source is required for reasons of national security. The President may extend national security exemptions for one or more two-year periods, but must report to Congress each exemption or extension.

SECTION 113. FEDERAL ENFORCEMENT

SECTION 114. INSPECTIONS, MONITORING, AND ENTRY

SECTION 116. ABATEMENT BY MEANS OF CONFERENCE PROCEDURE

The House bill amended section 108 by authorizing the Secretary of Health, Education, and Welfare, to request the Attorney General to bring suit to abate intrastate as well as interstate air pollution where a State failed to enforce its implementation plan, and, in a new section 112 provided for Federal enforcement of Federal emission standards for stationary sources. Each of the two sections provided for court assessment of penalties against polluters, and authorized entry into and inspection of suspected

polluters' facilities by DHEW investigative personnel for purposes of enforcement. The Senate bill established a new section 116 directing the Secretary to issue an abatement order to any person in violation of a State implementation plan requirement not being enforced by the State, and to a person in violation of any Federal stationary source emission standard or limitation required under section 113 or 114 of the Senate bill. Section 116 further provided for the institution of civil actions by the Secretary to obtain compliance with abatement orders, with requirements under section 113, 114, or 115, and with inspection and monitoring requirements imposed in Title I, and authorized substantial fines and imprisonment for knowing violations of emission standards and limitations, knowing failure or refusal to comply with an abatement order, or knowing falsification or misrepresentation in required reports, records, or monitoring data. Also under section 116, the Senate authorized entry and inspection by DHEW personnel of buildings, facilities, and monitoring equipment for purposes of setting standards and enforcing them. The Senate's proposed new sections 113 and 114 also provided for assessment of civil penalties by the Secretary for violation of standards imposed thereunder.

The conference substitute retains the enforcement provision of existing law for abatement of international pollution problems and abatement against certain sources of pollution not covered by these amendments. Past enforcement action and requirements are preserved.

The conference substitute follows the House bill relating to enforcement in areas of primary State responsibility and the Senate amendment where primary Federal responsibility exists. In case of a violation of any requirement of a State implementation plan, the Administrator is to notify the State in which the violation occurs as well as the

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violator. If the violation extends beyond the thirtieth day after notification, the Administrator may issue an order requiring compliance by such person or may bring court action against such person. In case of a State failure to enforce a plan, the Administrator shall notify the State. If the State's failure to enforce such plan extends beyond the thirtieth day after notification, the Administrator is to give public notice of such finding and thereupon, until the State resumes enforcement of plan, the Administrator may enforce the implementation plan either through an

order requiring any violator in such State to comply or by bringing court action against any such violator.

In case of a violation of a Federal standard of performance for new stationary sources or a Federal emission standard for hazardous pollutants, the Administrator may enforce such standards either through an order requiring any violator to comply or by bringing court action against any violator. Under sections 111 and 112, the Administrator has authority to delegate enforcement authority to the States to enforce these Federal standards concurrently with the Federal Government.

Knowing violations of an order issued by the Administrator or of State implementation plan requirements (where the violator has received notice) or of Federal standards of performance for new sources or of Federal emission standards for hazardous emissions shall be punishable by a fine of not more than $25,000 per day of violation or by imprisonment for not more than one year. For second or subsequent violations the fine is not more than $50,000 and imprisonment for not more than two years.

The provisions of the conference substitute with regard to inspections, monitoring and entry follow substantially the provisions of the Senate amendment.

SECTION 116. RETENTION OF STATE AUTHORITY

Except with respect to standards for moving sources, the States' authority to adopt and enforce standards applicable to air quality and emissions is retained in the conference substitute.

The conference substitute retains the provisions of the Senate amendment which requires (to the extent practicable within the time provided) consultation with advisory committee prior to carrying out certain functions required by Secs. 108, 111, 112 and 202.

SECTION 118. CONTROL OF POLLUTION FROM FEDERAL FACILITIES

The House bill and the Senate amendment declared that Federal departments and agencies should comply with applicable standards of air quality and emissions.

The conference substitute modifies the House provision to require that the President rather than the Administrator be responsible for assuring compliance by Federal agencies.

SECTION 202. ESTABLISHMENT OF STANDARDS

The House bill did not amend the provisions of existing law relating to the establishment of standards for new motor vehicles. The Senate amendment deleted the requirements that such standards be based on

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a test of technical and economic feasibility, and provided statutory standards for passenger cars and required that such standards be achieved by a date certain. The Senate bill also provided that the statutory deadline could be extended for not more than one year if the Administrator made a series of specified findings. The Senate bill also authorized the Admisitrator to set standards of emission performance for vessels, commercial vehicles, and aircraft. (The House bill treated aircraft emissions in a different section.)

The conference substitute follows substantially the Senate amendments. The Administrator is directed to establish emission standards for pollutants from new motor vehicles or engines which are likely to endanger the public health or welfare. Such standards are to be applicable for the useful life of the vehicles or engines. The statute specifies that "useful life" shall be a period of use of at least five years or 50,000 miles, whichever occurs first. Administrator shall prescribe regulations to implement this definition. The effective date of the standards is to depend on the period necessary to develop the requisite technology giving appropriate consideration to the cost of complying by such date.

Carbon monoxide and hydrocarbon emissions from light duty vehicles for 1975 model year and thereafter are to be reduced at least 90 per centum over 1970 standards for these pollutants. Oxides of nitrogen emissions from light duty vehicles for the 1976 model year and thereafter are to be reduced by at least 90 per centum over the actual emission of these pollutants from 1971 model vehicles which were not subject to Federal or State standards for such emissions.

Any manufacturer may apply to the Administrator within specified time limits for a one-year suspension of the statutory time limits, and the Administrator is to issue interim standards if he approves such application. Such interim standards are to reflect the greatest degree of emission control which is achievable by application of technology determined by the Administrator to be available, giving appropriate consideration to the cost of applying such technology within the time available to manu-

facturers. The Administrator is to take into consideration whether the manufacturer has met statutory requirements relating to public interest, public health and welfare, availability of technology, and good faith efforts to meet standards.

The Administrator is to undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the feasibility of meeting statutory deadlines for the 1975 and 1976 model years. In entering into such arrangements, Administrator is to request the Academy to submit its first report not later than July 1, 1971. The Administrator is directed to use the authority granted to him to furnish to the Academy any information requested by it.

SECTIONS 203–205. ENFORCEMENT OF MOTOR VEHICLE EMISSION STANDARDS

The House bill revised the enforcement provisions respecting motor vehicle emissions to prohibit sale of new motor vehicles and engines without complying with the House warranty and labeling requirements. The Senate amendment revised these provisions to prohibit rendering emission control systems or devices inoperative after sale of the vehicle or engine, to remove the exemption for vehicles or engines manufactured for export, and to increase the maximum penalty

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for violations of the enforcement provisions from $1,000 to $10,000 per vehicle.

Sec. 203 generally follows the provisions of the House bill except that prohibited acts are added relating to recall (Sec. 207) or knowing removal of devices by the manufacturer or dealer. Also, vehicles intended solely for export must comply with Federal emission standards unless the importing nation has differing requirements affecting motor vehicle emissions or has advised that no such requirements exist at this time. Penalties provided in Sec. 205 follow the Senate amendment.

SECTIONS 206–207. COMPLIANCE WITH MOTOR VEHICLE EMISSION STANDARDS

The provisions of the House bill and the Senate amendment revising the procedures under existing law for prototype testing and authorizing production line testing of new motor vehicles and engines were essentially the same, except that the Senate

amendment required compliance testing of each vehicle prior to delivery. In addition, the Senate amendment required semiannual publication of the results of prototype and assembly line testing, and disclosure by manufacturers of the actual cost of emission control devices and systems.

The House bill required manufacturers to warrant that vehicles or engines they produce are of substantially the same construction as the prototype vehicle with respect to which the certificate of conformity was issued. The Senate amendment required (effective 90 days after the Administrator establishes feasible testing methods and procedures) that manufacturers warrant that vehicles and engines will conform with applicable emission standards throughout their useful life (set at 5 years or 50,000 miles) if maintenance and certain other requirements are met.

The Senate amendment also authorized the Administrator, if he determined that any class or category of vehicles or engines did not conform with applicable emission standards, to require manufacturers to notify purchasers of such nonconformity. Moreover, if a manufacturer discovered such nonconformity during the term of any warranty required under the Senate amendment, he was required to notify purchasers of the nonconformity and to remedy such nonconformity at no cost to the owner.

The conference substitute adopts substantially the provisions of the House bill relating to prototype and production line testing and the provisions of the Senate amendment relating to compliance after sale and warranty. The Administrator would be required to test, or require to be tested, any new motor vehicle or engine submitted by any manufacturer to determine whether such vehicle or engine meets Federal emission standards. If such vehicle or engine conforms, Administrator shall issue certificate of conformity for a period not to exceed one year. Additionally, the Administrator would be required to test any emission system incorporated in an automobile submitted by any person (who need not be an automobile manufacturer) to determine whether such system meets the statutory emission standards prescribed by section 202. He is to inform automobile manufacturer, the National Academy of Sciences, and the public of the results of such tests. The Administrator may test (or prescribe tests to be performed by the manufacturer) all or a sample of vehicles or engines on the assembly

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line to determine whether such vehicles or engines actually con-

form with applicable emission standards. If the Administrator determines that such vehicles or engines do not conform, he may suspend or revoke certificate in whole or in part. Such suspension or revocation shall apply to vehicles manufactured after date of notification (or if manufactured prior thereto, to vehicles still in the hands of the manufacturer). Such suspension or revocation shall continue until the Administrator finds that vehicles or engines conform. During the period of suspension or revocation, the Administrator may issue certificate of conformity applicable to those vehicles or engines which he has found actually conform to emission standards. An administrative hearing, with judicial review, is provided.

The Administrator's employees may conduct plant inspections or inspect records upon presentation of appropriate credentials.

To assist prospective purchasers, the Administrator is to make available to the public comparative test results.

The Administrator is required to establish methods for testing vehicles and engines in actual use to determine their compliance with emission requirements during their useful life (5 years or 50,000 miles, as defined by the statute).

The provision for warranty follows the Senate bill except, in addition to establishing test procedures, the Administrator must find that inspection facilities or equipment are available to enforce individual vehicle compliance. Also a warranty will not become effective for a vehicle unless failure to comply with a standard subjects the purchaser to sanctions. Proper operation and maintenance are a precondition to the manufacturer's obligation. In addition to the performance warranty, the conference substitute calls for a defect warranty for materials and workmanship.

If the Administrator determines (on the basis of inspections or studies) that a substantial number of any class of vehicles or engines, although properly maintained and used, do not meet the emission standards during the useful life of such vehicles or engines, he shall notify the manufacturer of such nonconformity, and he shall require the manufacturer to submit a plan for remedying such nonconformity. In the case of properly used and maintained vehicles and engines, this is to be done at the expense of the manufacturer. If a manufacturer disagrees with such determination the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views at a public hearing. Unless, upon such hearing, the Administrator withdraws such determination, he shall, within 60 days after completion of the hearing, order the manufacturer to notify pur-

chasers. The Administrator shall prescribe regulations concerning notification procedure. Any cost obligation incurred by any dealer is to be borne by the manufacturer and transfer of such cost obligation through franchise or any agreements from a manufacturer to a dealer is prohibited.

If a manufacturer's advertising makes any statement respecting the cost or value of emission control devices or systems, such statement must set forth the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The manufacturer shall furnish such written instructions for maintenance and use of any vehicles and engines by ultimate purchasers as are necessary to assure proper functioning of emission control devices

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or systems. The manufacturer must indicate by a permanently attached label that the vehicle or engine is covered by a certificate of conformity.

SECTION 208. STATE MOTOR VEHICLE EMISSION STANDARDS

The Senate amendment modified section 208 of existing law to expand the authority of States to adopt and enforce emission standards for new motor vehicles and engines. The House bill did not change existing law.

The conference substitute follows the House bill by retaining the provision of existing law.

SECTION 211. REGULATION OF FUELS

Existing law (sec. 210 of the Clean Air Act) provides for registration of fuels and fuel additives delivered for introduction into commerce. The House bill amended this section to authorize the Administrator to establish standards respecting the physical or chemical properties of any fuel or fuel additive by specifying limitations on (or providing for elimination of) ingredients (including additives) or on the physical or chemical characteristics of any fuel or class of fuels if either (1) emission products from the fuel or fuel additive endanger public health or welfare, or (2) the fuel or fuel additive will significantly impair performance of an emission control device or system in general use (or likely to be in general use) on a significant number of motor vehicles or motor vehicle engines. Such standards must be based on specific

medical, scientific, economic, and technological findings specified in the House bill.

The Administrator's authority under the House bill was applicable to all types of fuels, whether used in stationary sources or in motor vehicles, except that it did not apply to aviation fuel or additives thereto.

The Senate amendment amended the fuel registration provisions to expand the Administration's authority in this area, and in addition authorized him to control or prohibit the introduction into commerce of any fuel for use in vehicle engines if the combustion or evaporation of such fuel produces emissions which endanger the public health or welfare, or if such emissions prevent operation of effective systems for the control of emissions from any vehicle or vehicle engine which the Administrator finds would otherwise conform to applicable emission standards. The Administrator was required to hold public hearings and make certain findings before establishing a control or prohibition under this provision. Regulation of motor vehicle fuels by States and political subdivisions for purposes of emission control was preempted by the Senate amendment.

Under the conference substitute the Administrator may control or prohibit manufacture or sale of any motor vehicle fuel or fuel additive if any emissions therefrom will endanger the public health or welfare, or if emission products of such fuel or additive will impair to a significant degree the performance of any emission control device or system which is or will be in general use. Existing provisions of law relating to registration of fuels and fuel additives are retained with some revisions.

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Before controlling or prohibiting manufacture or sale, the Administrator is required to consider specific technical and cost factors. Automobile manufacturers are required to furnish to the Administrator any information developed concerning emissions from motor vehicles resulting from the use of any fuel or fuel additive or the effect of such use on the performance of any emission control device or system.

No State may prescribe or enforce controls or prohibitions respecting any fuel or additive unless they are identical to those prescribed by the Federal Government or unless a State implementation plan under sec. 110 includes provision for fuel or additive control and such plan is approved by the Administrator as

being necessary for achievement of national air quality standards. These restrictions will not apply to California.

A civil penalty of $10,000 per day is provided for violations of the provisions relating to fuels and additives.

SECTION 210. STATE GRANTS

The House bill made no changes in existing law under which the Administrator may make grants to State air pollution control agencies in an amount up to two-thirds of the cost of developing uniform motor vehicle emission device inspection and emission testing programs.

Under the Senate amendment, such grant authority would be broadened (1) to cover the costs of maintaining, as well as developing, such programs and (2) to include emission control programs as well as device inspection and emission testing programs. The Senate amendment also provided that grants under section 210 would be in addition to, and not supplant, existing funding programs of a State for air pollution control.

The conference substitute provision is the same as that in the Senate amendment except that (1) the language providing that section 210 grants must be in addition to existing State funding programs is deleted, and (2) such grants to any State are made subject to the condition that the State program includes provisions designed to insure that emission control devices and systems on vehicles in actual use are not disconnected or rendered inoperative.

SECTION 212. DEVELOPMENT OF LOW-EMISSION VEHICLES

The Senate amendment contains provisions not in the House bill under which the development of low-emission vehicles would be encouraged by requiring such vehicles to be purchased for use by agencies of the Federal Government if the cost of such vehicles would not exceed 150 per centum (200 per centum in the case of vehicles powered by new inherently low-polluting propulsion systems) of the retail price of any class or model of motor vehicle for which such low-emission vehicles are a certified substitute. Under the Senate amendment, such certifications would be made by a Low-Emission Vehicle Certification Board composed of the heads of designated interested Federal agencies, and two members appointed by the President. The Board may certify any class or

model of motor vehicles only if a certification application has been filed in accordance with

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regulations prescribed by the Board, the Administrator of the Environmental Protection Agency determines that the vehicle concerned is a low-emission vehicle, and the Board determines that such vehicle is suitable for use as a substitute for vehicles in use at that time by Federal agencies. The Senate amendment authorized an annual appropriation of not to exceed $50,000,000 for paying additional amounts for low-emission vehicles pursuant to, and for carrying out the purposes of section 212.

The conference substitute substantially incorporates the provisions of the Senate amendment. One significant change relates to the definition of low-emission vehicles. Under the Senate provision, a low-emission vehicle is defined as any motor vehicle which produces significantly less pollution than the class or model of vehicle for which the Board may certify it as a suitable substitute. Under the conference substitute, the definition of a low-emission vehicle takes into account the applicable emission standards which will be applied with respect to newly-manufactured motor vehicles under section 202 by providing that a low-emission vehicle is one which (1) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under such section 202 at the time of procurement to that type of vehicle; and (2) with respect to all other air pollutants, meets the new motor vehicle standards applicable under such section 202 at the time of procurement to that type of vehicle.

The conference substitute would reduce the authorizations in the Senate bill as follows: $5 million for the remainder of fiscal year 1971 and $25 million for fiscal years 1972 and 1973.

SECTION 241. AIRCRAFT EMISSION STANDARDS

Under the House bill (in a separate part of title II of the Clean Air Act) the Administrator was required to prescribe, as soon as practicable, standards applicable to the emission of any substance from aircraft or aircraft engines which in his judgment would, or likely would, cause or contribute to air pollution which endangers the health or welfare of any persons. The Administrator was required to consult with the Federal Aviation Administrator before prescribing such standards. The House bill required the Administrator of the Environmental Protection Agency, in

prescribing such standards, to consider technological feasibility and economic costs; to include such requirements with respect to manufacturers' warranties on aircraft emission control systems as are necessary to carry out the purposes of the Act; and to make any such standard effective with respect to any class of aircraft or aircraft engines on such date as the Administrator determines appropriate after taking into account such period of time as may be reasonably necessary for compliance. The House bill also provided that the Federal Aviation Administrator would apply such emission standards in the certification and inspection of aircraft and aircraft engines pursuant to his authority under the Federal Aviation Act of 1958. Under the House bill, the States were preempted from adopting or enforcing any emission control standard with respect to aircraft or aircraft engines to which the Federal standards would apply.

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Under the Senate amendment aircraft and aircraft engine emissions were treated in a manner substantially similar to that in the House bill with the exception that the Administrator was not required to consider technological feasibility and economic costs in prescribing emission standards and that new aircraft and aircraft engines were subject to certification and compliance procedures similar to those which would be applied to new motor vehicles and new vehicle engines under section 202 of the Senate amendment.

The conference substitute requires that the Administrator of the Environmental Protection Agency set forth, after a 180-day study of the effect of aircraft emissions or air quality, and the availability of emission control technology, and after public hearings in regions where air quality is most affected by aircraft emissions, standards for such emissions to take effect after such time as the Administrator, in consultation with the Secretary of Transportation, deems necessary to develop and apply requisite technology. The Secretary of Transportation is required to enforce these standards, and States and political subdivisions are prohibited from adopting or enforcing aircraft emission standards unless they are identical to standards prescribed under this legislation.

SECTION 244. AVIATION FUEL STANDARDS

The House bill amended the Federal Aviation Act to provide for

the establishment of standards for aviation fuels for the purpose of controlling or reducing aircraft emissions. The Senate amendment included no comparable provision.

The conference substitute follows the House bill except that the fuel standards are to be recommended by the Administrator of the Environmental Protection Agency. The Administrator of the Federal Aviation Administration is required to prescribe such recommended standards.

SECTION 303. EMERGENCY POWERS

The House bill retained the provision of existing law (Sec. 108 (k)) relating to direct action by the Administrator to seek an injunction to abate pollution which presents an imminent and substantial endangerment to public health without regard to location of the source or sources of such pollution. The Senate amendment retained substantially the same authority but placed it in a new section.

The conference substitute follows the Senate amendment.

SECTION 304. CITIZEN SUITS

The House bill did not include a provision for citizen suits. The Senate amendment authorized citizen suits against violators, government agencies, and the Administrator to seek abatement of such violations or for enforcement of the provisions of the Act. Notice of thirty days was required except in certain instances. Discretionary authority was provided to the court to grant reasonable attorney and expert witness fees. Other rights to seek enforcement of standards under other provision of law were not affected.

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The conference substitute retains provisions for citizen suits with certain limitations. Suits against the Administrator are limited to alleged failure to perform mandatory functions to be performed by him. Suits against violators, including the United States and other government agencies to the extent permitted by the Constitution, would also be authorized. Prior to commencing any action in the district courts, the plaintiff must have provided the violator, the Administrator and the State with sixty days notice. If an abatement action is pending and is being diligently pursued in a United States or State court, such action cannot be

commenced but any party in interest may intervene as a matter of right.

No delay following notice is required where there is an alleged violation of a hazardous emission standard or of an order of the Administrator. The conference substitute also provides that actions respecting violations by stationary sources are to be brought in the district in which the source is located and establishes that, in any action, the Administrator may intervene as a matter of right.

The courts' discretionary authority to award costs, as provided in the Senate amendment, is retained. In addition the courts' discretionary authority to require filing of bond if a temporary restraining order or preliminary injunction is sought is noted.

The right of persons (or class of persons) to seek enforcement or other relief under any statute or common law is not affected.

SECTION 305. APPEARANCE

The Senate amendment provided authority for the Administrator to represent himself in court rather than relying on the Attorney General. The House bill did not contain a similar provision.

The conference substitute provides the Administrator with authority to represent himself in a court action if, after notice, the Administrator determines that the Attorney General will not act, or will not act soon enough.

SECTION 306. FEDERAL PROCUREMENT

The Senate bill amended the Act by adding a new section 306 declaring that any person not in compliance with a Federal court order issued pursuant to the Act or convicted by a Federal court for a knowing violation of an emission standard or limitation under the Act would not be eligible to enter into procurement contracts with Federal agencies, until such time as the Secretary certifies that the person has come into compliance. The section also directed the President to issue an order instructing Federal agencies to effectuate the purpose and policy of the Act in entering into contracts, and in making grants and loans, but further authorized the President to exempt a particular contract, loan, or grant from all or part of the provisions of the section where necessary in the interests of the United States. The House bill contained no comparable provisions.

The conference substitute is more limited than the Senate provision. It provides that persons convicted of a knowing violation of standards or limitations shall be ineligible to enter into Federal contracts until the Administrator certifies that the violation has been corrected. The remainder of the conference substitute follows the Senate amend-

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ment by requiring the President to issue an order requiring Federal agencies (1) to assist in the implementation of this Act and (2) to establish sanctions for non-compliance. Authority is provided to exempt contracts, loans, and grants in the paramount interest of the United States from such sanctions for reasons of national security. Such exemptions and other efforts to implement the Act are to be reported to the Congress.

SECTION 307. ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW

The Senate bill inserted a new section 308 in the Act to establish guidelines and specify forums for judicial review of certain actions of the Secretary provided for under the Act and the proposed amendments, and provided that commencement of such proceedings would not stay applicability of any standard, requirement, limitation, or waiver which was the subject of the Secretary's action. No comparable provisions appeared in the House bill.

The conference substitute includes provisions relating to subpenas, specifies the courts in which certain appeals may be prosecuted, and the circumstances under which additional evidence may be order by the courts to be taken by the Administrator.

SECTION 308. MANDATORY LICENSING

The Senate amendments contained provisions for the mandatory licensing of patents, trade secrets, and know-how whenever the Administrator determined that the achievement of standards established under specified sections of the Senate amendments required the utilization of such patents, trade secrets or know-how. The House bill did not contain comparable provisions. The conference substitute is limited to patents. It would authorize the Attorney General (rather than the Administrator) to certify to a U.S. District Court that conditions specified in the section (relating to (1) the need for using the patent to achieve emission limitations required by this Act, (2) the absence of alternative

methods to achieve such emissions, and (3) resulting lessening of competition or monopolization) exist and may seek a court rule requiring licensing on such reasonable terms and conditions as the court may determine.

SECTION 401. NOISE POLLUTION

The Senate bill added a new Title IV to the Act, which directed the Secretary of Health, Education, and Welfare to establish an Office of Noise Abatement and Control for the purpose of investigating and identifying the sources of noises and effects on public health and welfare, and to report to the President and Congress within one year of enactment the results of the investigation and study. The Senate amendment also provided a specific authorization of $30 million to carry out Title IV. The House bill made no provision respecting noise.

The conference substitute follows the provisions of the Senate amendment.

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SECTION 309. AUTHORIZATIONS

The House bill would authorize appropriations of the following amounts:

Fiscal Year	Sec. 104	Sec. 309	Total
1971	$75,000,000	125,000,000	200,000,000
1972	100,000,000	150,000,000	250,000,000
1973	125,000,000	200,000,000	325,000,000
Total	300,000,000	475,000,000	775,000,000

The Senate bill would authorize appropriations of the following amounts:

Fiscal Year	Sec. 104	Sec. 309	Total
1971	$125,000,000	150,000,000	275,000,000
1972	150,000,000	250,000,000	400,000,000
1973	175,000,000	325,000,000	500,000,000
Total	450,000,000	725,000,000	1,175,000,000

It should be noted that the Senate bill would redesignate section 309 as section 317.

In addition, the Senate bill would authorize appropriations of

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$15 million under the proposed new section 107 (long-term contracts for research on effects of air pollution) ; $30 million under Title IV for the Office of Noise Abatement and Control; and $50 million annually for low emission vehicle procurement.

The conference substitute adopts the House amount for Fiscal Year 1971 for Sec. 104 and Sec. 309—a total of $200 million. For Fiscal Year 1972 the conference agreement provides for a total of $350 million of which $125 million is for research on fuels and vehicles. For Fiscal Year 1973 the authorization is $150 million for research under Section 104 out of a total of $450 million. In addition the conference substitute retains $15 million for long term contracts for air pollution effects research under Section 103, $30 million for funding the Office of Noise Abatement in the Environmental Protection Agency, and $55 million for low emission vehicle procurement, $5 million of which is authorized for Fiscal Year 1971 and $25 million each for Fiscal Years 1972 and 1973.

SECTION 310. POLICY REVIEW

The Senate amendment provides a statutory requirement that the Administrator review and comment on environmental impact statements required by Public Law 90–190 (The National Environmental Policy Act). The Senate amendment also required the Council on Environmental Quality to review any determination of environmental impact and make a recommendation to the President. The House bill had no such provision.

The conference agreement follows substantially the Senate version. The Administrator is instructed to review and comment on Federal actions which affect the environment and make such comments public

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upon completion of the review. The conference substitute eliminates the requirement that the Council, make a public recommendation to the President.

HARLEY O. STAGGERS,
JOHN JARMAN,
PAUL G. ROGERS,
WILLIAM L. SPRINGER,
ANCHER NELSEN,
Managers on the Part of the House.

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1.1k(4) Congressional Record, Vol. 116 (1970)

1.1k(4)(a) June 10: Considered and passed House, pp. 19200–19244

CLEAN AIR ACT AMENDMENTS OF 1970

Mr. MADDEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1069 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1069

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 17255) to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and all points of order against the provisions beginning on page 52, line 1 through page 53, line 4 of said committee substitute are hereby waived. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. MADDEN. Mr. Speaker, I yield 30 minutes to the distinguished gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1069 provides an open rule with 2 hours of general debate for consideration of H.R. 17255, Clean Air Act Amendments of 1970. The resolution also provides that it shall be in order to consider the committee substitute as an original bill for the purpose of amendment and that all points of order are waived against the provisions beginning on page 52, through line 4 on page 53 of the committee substitute. Points of order are waived against the specific language on pages 52 and 53 because of the question of germaneness.

The purpose of H.R. 17255 is to speed up, expand, and intensify the war against air pollution.

The Secretary of Health, Education, and Welfare will be authorized and directed to establish nationwide air quality standards and the States will be left free to establish stricter standards, if they so desire. Thus, the war against air pollution will be carried on throughout the Nation rather than only in particular geographical areas.

Within 60 days after promulgation of national ambient air quality standards, the Governor of a State may file a letter of intent that the State will, within 180 days and after public hearings, adopt a plan for the implementation and enforcement of such standards, and the Secretary may extend the 180-day time period for good cause shown but not to exceed an additional 180 days.

I commend the committee for reporting this legislation to eliminate the disgraceful pollution of the air, especially in industrial urban centers. The Calumet region of Indiana is

making slow progress on air pollution. Steel mills, oil refineries, and other air polluters will welcome both Federal and State unity to join with local governments to solve this gigantic air pollution menace that is endangering the health of millions of helpless citizens over the Nation.

The bill authorizes appropriations for fiscal year 1971 in the amount of $200 million, for fiscal year 1972 in the amount of $250 million, and for fiscal year 1973 in the amount of $325 million.

Mr. Speaker, I urge the adoption of House Resolution 1069.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Indiana [Mr. MADDEN] has ably stated House Resolution 1069 makes in order consideration of the Clean Air Act Amendments of 1970, under an open rule, 2 hours of debate, the committee substitute is made in order as an original bill for the purpose of amendment, and points of order are waived against that part of the committee amendment which includes all of page 52 and the first 4 lines of page 53 of the bill. This language, which amends the Federal Aviation Act, is nongermane.

The purpose of the bill is to speed up, expand, and intensify the war against air pollution in the United States. A thorough review of the Clean Air Act as presently administered indicates an intensification is necessary.

The bill authorizes the Secretary of Health, Education, and Welfare to establish nationwide air quality standards with the States left free to establish even stricter standards in their own boundaries. No standards may be less vigorous than Federal standards. For the five pollutants which the Secretary already has established criteria—sulfur oxides, particulate matter, carbon monoxide, hydrocarbons, and photochemical oxidants —national standards would be issued within 30 days after the date of enactment. With respect to other pollutants, standards would be proposed within 30 days after the criteria has been established.

Each State must file a letter of intent, that the State will within 180 days adopt a plan to implement and enforce the standards. If a State fails to file a letter or implement the plan in 180 days, the Secretary himself may institute an acceptable plan. The bill authorizes the Secretary to test or require to be tested in a manner he deems appropriate any new motor vehicle or engine as it comes off the assembly line in order to determine whether the vehicle or engine conforms with national standards, already adopted. Further, he is authorized to establish limitations on ingredients of fuels in motor vehicles when he deems it necessary. The Secretary is given similar authority for air pollutants in aircraft and aircraft engines. Under present law, the Secretary does not have such authority. The bill authorizes appropriations for fiscal year 1971 of approximately $200 million; 1972, $250 million; 1973, $325 million. Of these amounts, $75 million for 1971, $100 million for 1972, and $125 million for 1973 are earmarked for research relating to controlling pollution resulting from the combustion of fuels in vehicle and aircraft engines.

There are no agency reports.

Mr. Speaker, I recently introduced a package of seven bills on air and water pollution control, a description of which I outline here.

H.R. 16024 amends the Land and Conservation Fund Act of 1965 to authorize the sale of surplus Federal real property to any State, county,

municipality, or other political subdivision to be used as a public park or recreation area. Moreover, any moneys realized from these sales in excess of $54,700,000 a year will be placed in the land and water conservation fund which, in turn, will be used to provide additional park and recreational facilities.

This bill, when enacted, could transfer vast amounts of land from restricted Federal reservations to much-needed recreational and park land available to all the people.

H.R. 16025 is concerned with the burgeoning pollution problem. This bill recognizes that a pollutant might reasonably be considered as a resource out of place; indeed, the bill states clearly that pollution of air, water, and land can be ameliorated only by greater use of reclamation and recycling of material from solid wastes such as metals, plastics,

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ceramics and glass, paper products, and the like.

Failure to reclaim and recycle materials not only causes pollution of all kinds but also contributes to the wasteful depletion of primary natural resources—squandering our heritage, so to speak. The reason for this failure is that we do not know how to make the reclamation of materials economically advantageous as compared with using up primary resources. The problem is especially serious in regard to scrap automobiles.

Thus, this bill has two purposes: First, to provide for investigations, studies, surveys and research into the development of methods for encouraging greater reclamation and recycling materials from solid wastes; and, second, to give special consideration to the problem of motor vehicle hulks.

Now, who is going to do these things and how are they going to achieve their goals? This program will be carried out by the newly created Council on Environmental Quality and they are going to develop a carrot and stick method—that is, they will study the relative effectiveness of various types of incentives, including financial and tax relief, along with regulatory measures to accelerate reclamation or recycling materials not presently competitive with primary resources. They will then make recommendations to the President for legislative proposals or executive actions which will insure attainment of the goals of this bill.

H.R. 16026 zeroes in on air pollution. This bill amends the Clean Air Act so as to extend its duration, provide for national standards of ambient air quality, expedite enforcement of air pollution control standards, authorize regulation of fuels and fuel additives, provide for improved controls over motor vehicle emissions, and to establish standards applicable to dangerous emissions from stationary sources.

Briefly, this bill streamlines the implementation required to secure clean and healthful air. It facilitates direct action by the Federal Government and shortens the length of time between recognition of a source of air pollution and its abatement. Perhaps most significant, it establishes stiff penalties of $10,000 fine per day per violation rather than the previously established fine of $1,000 maximum fine per violation.

H.R. 16027, H.R. 16028, and H.R. 16029 are each concerned with the abatement of water pollution. They constitute three separate amendments to the Federal Water Pollution Control Act, each of which deals with vital areas.

H.R. 16027 deals primarily with grants of money. The first portion of

this bill updates and extends the authority of the Department of the Interior to support and encourage research relating to the causes, control, and prevention of water pollution. Grants may also be made for studies that will enhance or protect water quality, demonstrate advances in waste water reuse technology, or contribute to knowledge concerning associated problems. More specifically, the kinds of research this bill is designed to support are:

First, practical means of treating municipal sewage so as to maintain the maximum amount of the Nation's waters at a quality suitable for repeated reuse;

Second, methods and techniques of identifying the effects of pollutants upon water quality;

Third, methods and procedures for evaluating the effects of augmented streamflow on water quality;

Fourth, analyses of bodies of water with respect to water quality, waste disposal practices, water uses and needs, and water quality management;

Fifth, development of better methods of managing storm sewer discharges;

Sixth, development of advanced waste treatment and waste water renovation; and

Seventh, development of new and improved methods of managing industrial waste discharges.

The second portion of this bill authorizes increased moneys to the States for planning programs to prevent and control water pollution. The augmentation in the size of these grants available deserves special recognition. The original act authorized $3 million for each of the years 1957 to 1961. The amounts authorized for 1961 to 1967 were $5 million, and from 1967 to 1970 it was $10 million. This bill authorizes $12.5 million in 1971; $15 million in 1972; $20 million in 1973; $25 million in 1974; and $30 million in 1975. The tremendously augmented moneys speak eloquently for how important the State role is in water pollution abatement.

H.R. 16028 is especially significant. It broadens the scope of the Water Quality Act in several very meaningful ways by amplifying both the national policy and the waters subject to enforcement action by the Secretary of the Interior.

The national policy will now embrace not only the concepts of water pollution abatement and environmental quality enhancement, but will also provide for planning future water quality management in keeping with our Nation's population growth, industrial expansion, agricultural intensification, energy requirements, recreation and conservation uses, and environmental quality.

This bill broadens the scope of waters under protection to include not only interstate and navigable waters as before, but also ground waters.

These underground water resources are an important portion of our water supply formerly free from protection against pollution. This bill also protects against pollution of the territorial seas of the United States. The high seas beyond the contiguous zone are protected from pollution transported from or originating in areas over which the United States has sovereignty.

A third effect of this bill is to put sharper teeth into enforcement procedures. The existing Water Quality Act does not specify penalties for violation of water quality standards, leaving the appropriate abatement procedures to the discretion of the courts. This bill specifies that the court may enforce its judgment by issuing an injunction against activities which cause violation of the

standards or by levying fines of up to $10,000 per day for each violation.

The third water pollution control bill, H.R. 16029, is designed to provide financial assistance for the construction of waste treatment facilities. The bill, when enacted, will make $4 billion of Federal moneys available to States and and municipalities over the next 4 fiscal years. Further, it requires that by January 1973, the Congress shall receive from the President a report on the financial requirements for construction of waste treatment facilities for fiscal years 1975 through 1979, thus assuring program continuity throughout the next decade.

This bill also adds flexibility to the ways that these moneys can be made available by permitting the Federal Government to incur obligations in the form of grant agreements as well as by direct granting.

H.R. 16030 establishes an Environmental Financing Authority to assist in the financing of waste treatment facilities. The purpose of this bill is to assure that the inability to borrow necessary funds at reasonable rates does not prevent any State or municipality from constructing waste treatment works authorized and financed with the aid of grants provided by the Secretary of the Interior, as just described. This authority will be a federally insured agency and occupy a statutory position parallel to that of the well-known Federal National Mortgage Association and the Government National Mortgage Association.

The impact of this Environmental Financing Authority is hard to overestimate because many municipalities, especially those with limited tax bases, are unable to supply their share of the money needed to construct waste treatment facilities. Bond issues in these days of high interest rates have met increasingly with failure. These forces have combined to frustrate achievement of the national goal of water free from pollution.

I take great pride in presenting a discussion of these administration bills to you. Each of them is a major step forward in the preservation and enhancement of our environment; together they are a dynamic, effective program of great value to the people of the United States.

Mr. Speaker, I have no further requests for time, but I reserve the balance of my time.

I urge the adoption of the resolution and the bill.

Mr. MADDEN. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. FARBSTEIN].

Mr. FARBSTEIN. Mr. Speaker, I want to thank the gentleman from Indiana [Mr. MADDEN] for yielding me this time.

Mr. Speaker, I rise in opposition to the rule on H.R. 17255, the Clean Air Act Amendments of 1970. I am opposing the rule because of the undue haste with which this bill is being brought to the floor of the House. Less than 24 hours' notice has been given and a committee hearing record is not yet available.

I am opposing the rule because I believe that the Members of this House should have had more than a few hours to consider a bill as complex and as vital to the Nation's health and welfare as this one. The number of ineffective pieces of environmental protection legislation at

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the State, local, and Federal level, is legion. Given the complexity of such legislation, it is perhaps not surprising that so many legislatures have failed to keep their promises. I do not want this House to fail. I believe that a mere 24 hours' notice of such an important measure is totally inadequate. I urge the House to delay

consideration of this bill until the Members have an opportunity to give it the careful thought and scrutiny it demands.

Hundreds of young men and women, and also many older people as well, intended to come to Washington at their own expense, many from great distance, to work within the system to let the Congress know of their concern that the blight of the internal combustion engine should be ended. The focus of their interest was to be H.R. 17255 and four amendments to be offered to the bill.

Unfortunately, through those actions which sometimes happen in the U.S. Congress, these fine people will not have their chance to speak their minds; nor will the Members of the House have the benefit of their thoughts and the opportunity to reflect on the many complex problems involved in this legislation.

The issues raised by these four amendments, whether one agrees or disagrees with them, are fundamental and have far-reaching implications for the Nation's environment and its transportation system. The amendments deserve careful scrutiny and enlightened and informed debate.

Mr. Speaker, the Nation is becoming accustomed to air pollution legislation so riddled with loopholes and delays as to be unworkable. Two and one-half years ago the House unanimously passed the Air Quality Act of 1967. Since that time not one smokestack has been cleaned up; and up to 80 percent of auto emission control devices fail to function properly after 11,000 miles of performance. As a result of inadequate legislation and administration, the pollution of our air has increased. This bill, as reported from committee, makes many small improvements to the present legislation. But none of these improvements is enough to curb the rising levels of environmental poison. I had hoped to strengthen at least one part of this bill, and help solve at least one-half the problem, the half, or rather 60 percent contributed by the automobiles. This does not mean that I am at all satisfied with the still too weak provisions for stationary sources, the factories and powerplants.

Mr. Speaker, I do not want to vote against air pollution control legislation. But we have already broken too many promises to the American people. I urge my colleagues to oppose the rule so that after due consideration, we may at least present the American people with half a solution.

One of the amendments would adopt as minimum national standards for auto emissions the standards already adopted and approved by California for 1971, 1972, and 1974 model cars.

A second would authorize voluntary testing of devices driven over 4,000 miles, with the Federal Government empowered to require the auto industry to correct patterns of defects uncovered.

A third would substitute the far superior fuel additive regulation provisions recommended by the administration for the almost totally unworkable provision in the committee bill.

The final amendment would establish auto emission standards beginning in 1975, based on the cleanest feasible propulsion system, rather than on what the internal combustion engine can achieve.

Should the House nevertheless vote to consider the bill today, I hope and trust that the Members of the House will make the sustained effort to consider these amendments and will then join with me in supporting their adoption on the floor.

Mr. MADDEN. Mr. Speaker, will the gentleman yield?

Mr. FARBSTEIN. I yield to the gentleman.

Mr. MADDEN. Mr. Speaker, I think the gentleman overlooks the fact that this is an open rule and the gentleman can offer any amendment he desires during debate in the Committee of the Whole House.

Mr. FARBSTEIN. I appreciate that and that is the reason for my last statement. However, there was no notice given on this legislation; it was not programed. In addition, I am voting against the rule because I feel this bill should be put over in order that Members of Congress and the people of the United States might know what legislation is coming up.

Mr. MADDEN. Mr. Speaker, will the gentleman yield?

Mr. FARBSTEIN. I yield to the gentleman.

Mr. MADDEN. As I understand it, it was the purpose of the leadership to call up the postal reform bill today on the floor. But yesterday the Committee on Rules, of which I am a member, was holding hearings from 10:30 a.m. to 4:30 p.m. and we were unable to get the bill reported out. We are still holding hearings upstairs on the postal reform bill and had it not been for the long Rules Committee hearing on postal reform this bill would not have been up for consideration today.

Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. RYAN].

Mr. RYAN. Mr. Speaker, I believe the gentleman from New York is exactly right on this question.

The degradation and contamination of our environment and the consequent effects upon the health of our citizens is a paramount issue. Far-reaching legislation is essential to preserve the quality of our environment.

In 1967, the Clean Air Act was passed unanimously, I believe; it has not sufficiently reached the problems to which it was addressed. The reason that it has not been more effective is probably because it was too noncontroversial. It satisfied too many interests to the detriment of the public.

Strong legislation is necessary. The Secretary would be empowered to set national emission standards for all stationary sources and not just for new sources. H.R. 17255 applies only to new sources which endanger the public health and welfare—a far too restrictive test. The test should be whether or not any source—old or new—contributes to the deterioration of environmental quality.

I believe the Secretary should have the power to issue court enforceable cease and desist orders against polluters as my bill, H.R. 17113, provides.

Several of us had intended to offer strengthening amendments, which would have been circulated in advance to the Members of the House so that they would have an opportunity to consider them fully and to be prepared to discuss them and to debate them. I prefer the approach of my bill, H.R. 17113, and might want to offer it as a substitute.

The lateness with which this bill was scheduled, not having been programed until late yesterday afternoon, makes that impossible.

I believe the procedure under which this bill is now being brought to the floor does a disservice to the Members of the House. We are entitled, it seems to me, at least to notice the previous week when the leadership intends to bring up a very important piece of legislation. If, in fact, the leadership found there were no other bills scheduled today, so be it. It is more important that we act thoroughly, with careful scrutiny, than simply programing a bill in order

to have something to do. Members should have sufficient notice for the consideration of major legislation.

Public concern about air pollution is so great that there is a groundswell of support for strong legislation. There should be enough notice for the public to let Congress know their feelings.

Beyond that, I am informed that the hearings are not available.

Mr. SPRINGER. Mr. Speaker, will the gentleman from Indiana yield?

Mr. MADDEN. I yield to the gentleman from Illinois.

Mr. SPRINGER. I have in my hand a copy of the hearings. They have been on the desk for the Members of the House.

Mr. RYAN. The hearings were not available to my office this morning. They may be here now. I am glad they are.

Mr. VAN DEERLIN. Mr. Speaker, will the gentleman yield?

Mr. MADDEN. I yield to the gentleman from California.

Mr. VAN DEERLIN. Mr. Speaker, I can well understand the problems that the Rules Committee and the leadership both encountered yesterday, and I concede it would not look well for the House on a Wednesday, in the month of June, to be virtually idle. However, both as a Californian and as a member of the Committee on Interstate and Foreign Commerce, I do somewhat resent the idea that this very important piece of legislation should be considered as a sort of stopgap activity, a backup piece of business for the House of Representatives—something to be considering on such short notice.

For that reason, for the first time in my 8 years in this body, I intend to observe the absence of a quorum when we come to a vote on the rule.

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. MADDEN. I yield to the majority leader.

Mr. ALBERT. Mr. Speaker, I certainly want to be among the first to recognize

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the interest which the three gentlemen who have spoken in opposition to this rule have had over the years on this subject. The record speaks for itself. I am sure that no Member is more conscientious or devoted to clean air than they. I agree with them that this is an important subject, one of the most important confronting the human race.

I also agree that in all instances as much notice as possible should be given to the House. I must call to the attention of the House the fact, however, that we did take extraordinary caution in announcing the program last week. Not only did the whip notice contain the usual reservation that any further program may be announced later, but we did specifically point out that there had been programed, and that perhaps it would be brought up on Wednesday, the postal reform bill, but that in case a rule was not granted, we would announce another program for Wednesday. I at first considered the Emergency Housing Amendments, but the distinguished chairman of the committee was not ready to go to the Rules Committee on that matter.

The distinguished gentleman from Florida [Mr. SIKES] stated that he could be ready on the military construction authorization bill for today, but it was requested by a number of Members—and this was specifically brought to my attention before we had made any arrangements to change the program or to add to the program —to give an extra day on this bill because there was a highly controversial item in it. In order to accom-

modate Members who wanted that extra time, I decided to heed the petitions of the gentleman from West Virginia and the gentleman from Florida to program the clean air bill, particularly in view of the fact that they advised me that it had come out of the committee unanimously.

That is the reason the bill was programed. It was one bill that had come out unanimously and the committee chairman was seeking to have it programed. Whether I was right or wrong, that is what happened, and after I promised the gentleman from West Virginia that I would program the bill, and we did have this day free, I did it.

I hope my colleagues, even though they are entitled normally to more notice than this, will realize we did give special notice that the program might have to be changed. We did announce when we made the program announcement that any bill that had a rule would be eligible for substitution. To that extent I think I should rise in defense of the procedure which we have used.

* * * * *

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore [Mr. GRAY]. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FARBSTEIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 336, nays 40, not voting 53, * * *.

So the resolution was agreed to.

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Mr. STAGGERS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 17255) to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air.

The SPEAKER pro tempore. The queston is on the motion offered by gentleman from West Virginia.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 17255) with Mr. GALLAGHER in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from West Virginia [Mr. STAGGERS] will be recognized for 1 hour and the gentleman from Illinois [Mr. SPRINGER] will be recognized for 1 hour.

The Chair recognizes the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I yield myself whatever time I might require to explain the bill.

Mr. Chairman, first I would like to say there seems to have been some controversy over the rule. I do not believe there is going to be this kind of controversy over the bill, because the bill has been well considered, and it has been given ample hearings. Many amendments were offered. Those

amendments were either adopted or voted down in the committee. The hearings started in December 1969 and proceeded through April of this year over a period of almost 4 months.

As I said, I do not believe there is any controversy over the bill itself. I know some amendments will be offered. We of the committee would be very happy for them to be offered and considered and in the proper way either voted up or voted down.

Air pollution in the United States is the result of pollution from numerous highly diversified sources. They range from millions of automobiles driven on city streets on interstate highways to a relatively limited number of facilities and plants which are large-scale polluters such as powerplants burning coal or fuel oil.

In fashioning effective strategies in the campaign for clean air in the United States, the different pollutants which affect our health and welfare in different ways and in varying degrees of severity, and the different sources from which they emanate must be controlled.

Every Member of this House knows we have had ample publicity not only in the newspapers and magazines, but also on TV and radio and through other media showing the dangers of the environment and to our health. That is one of the reasons this bill is before the House now, the fact that recognition has been given to these dangers.

The original act was enacted in 1955. It authorized research, and then in 1963, some beginning was made with regulation. Actually it was not until 1967, however, that the first bill of any consequence passed this House. So this program has been in operation for only 3 short years.

I would be the first to admit that not enough has been done under the present law. That is the reason why we have come here with a new bill changing the authority of the agencies, changing the procedures by which regulations will be adopted, and certainly cutting down on the time during which these things will be done.

Effective technologies to reduce or eliminate particular pollutants must be developed. Many people think these have already been developed and can be put into effect, but this is not true. That is the reason why almost half the money in this bill is for research and development. For instance, in checking on automobile air pollutants, it takes an average of about 9 to 13 hours to conduct checks to see whether a car meets the required standards. We are hopeful that under this bill there will be developed effective machinery to test cars within a very short time on the assembly lines or at test stations. That cannot be done now. It requires entirely new test methods.

As I said, really the first regulatory legislation was enacted in 1967. We have to develop the technology to carry out the new legislation now before us.

While the basic strategies in the Nation's war against air pollution must be developed in a unified and consistent way by the Federal Government, the implementation and enforcement of these strategies will have to be effected in every community in the United States. Therefore, prompt and effective regional, State, and local efforts are needed to win the campaign for clean air.

If we left it all to the Federal Government, we would have about everybody on the payroll of the United States. We know this is not practical. Therefore, the Federal Government sets the standards, we tell the States what they must do and what standards they must meet. These standards

must be put into effect by the communities and the States, and we expect them to have the men to do the actual enforcing.

While a start has been made in controlling air pollution since the enactment of the Air Quality Act of 1967, progress has been regrettably slow. This has been due to a number of factors: First, cumbersome and time-consuming procedures called for under the 1967 act; second, inadequate funding on Federal, State, and local levels; third, scarcity of skilled personnel to enforce control measures; fourth, inadequacy of available test and control technologies; fifth, organizational problems on the Federal level where air pollution control has not been accorded a sufficiently high priority, and sixth, last but not least, failure on the part of the National Air Pollution Control Administration to demonstrate sufficient aggressiveness in implementing present law.

On the other hand, the picture is not entirely bleak. Citizens and officials on the grassroot level throughout the United States have become seriously aroused over the threat of air pollution to health and well-being and they are anxious to have stringent controls imposed and enforced effectively at the earliest possible date.

It is also important to note that some industries have become aware of the need for effective pollution control measures. This ground swell is important if we are to secure clean air everywhere in the United States, and it is important that this momentum not be lost.

Therefore, it is urgent that Congress adopt new clean air legislation which will make possible the more expedious imposition of specific emission standards both for mobile and stationary sources and the effective enforcement of such standards by both State and Federal agencies.

Mr. FARBSTEIN. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I am happy to yield to the gentleman from New York.

Mr. FARBSTEIN. Will the gentleman please tell me why it is the entire Nation cannot have the same standards the State of California has in connection with the reduction of pollution that comes from the internal combustion engine? California had different standards for 1971, 1972, and 1974, yet under this bill the same standards exist up until 1975. The California standards are much more stringent. I would appreciate the gentleman telling me why the rest of the Nation cannot have the same standards as California.

Mr. STAGGERS. I should like to make my statement first, because this is a part of our presentation. I will answer the gentleman when I get through, if the gentleman does not mind.

The imposition of national ambient air quality standards and declaring each State as an air quality control region are steps aimed toward the achievement of those objectives. Effective pollution control requires both reduction of present pollution and prevention of new significant pollution problems.

Therefore, particular attention must be given to new stationary sources which are known to be either particularly large-scale polluters or where the pollutants are extrahazardous. The legislation, therefore, grants authority to the Secretary of Health, Education, and Welfare to establish emission standards for any such sources which either in the

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form of entire new facilities or in the

form of expanded or modified facilities, or because of expanded or modified operations or capacity constitute new sources of substantially increased pollution.

Automotive pollution constitutes in excess of 60 percent of our national air pollution problem and such pollution is particularly dangerous in the highly urbanized areas of our country. Therefore, increased attention must be paid to that source of pollution by insisting on the kinds of motor vehicles and fuels which would reduce pollution to minimal levels.

The committee hopes that the automobile manufacturers will not limit their choice of antipollution devices to those developed by them in-house, and that the two great industries—automobile manufacturers and automotive fuel producers—will join hands to develop the most effective technologies. The Government is not particularly well equipped to design cars or to determine the composition of fuels appropriate toward these ends. However, Congress would be derelict if it did not vest in the Government appropriate residual authority with regard to vehicles and fuels to make the necessary decisions should members of these industries fail to do so on their own.

The legislation, therefore, provides for more stringent testing of automobiles. Such testing is not limited, as heretofore, to the testing of prototypes. Such testing will continue but the tests should require each prototype rather than the average of prototypes to comply with regulations establishing emission standards.

In addition to prototype testing, daily testing either on a sampling or car-by-car basis will be required of vehicles as they come off the assembly lines. If such tests raise reasonable questions of compliance with applicable emission standards, the Secretary may suspend or revoke the certificate. He may, however, issue certificates for those cars which actually comply with the regulations in effect at that time.

The manufacturers must warrant that the vehicles have control systems or devices substantially of the same construction as the systems and devices on the prototype vehicles for which a certificate has been issued. Labels or tags must be permanently affixed to the vehicles or engines that are covered by a certificate. Such labels or tags must contain such additional information as the Secretary may prescribe.

In authorizing the Secretary to prescribe limitations for automotive fuel ingredients, the committee has conditioned the Secretary's authority by requiring specific findings based on specified evidence. The committee has done this for the purpose of assuring that such limitations will not be imposed lightly if other equally satisfactory alternatives are available.

In addition, the legislation provides for aircraft emission standards. The Secretary of Health, Education, and Welfare is authorized and directed to establish, after consultation regarding safety aspects with the Federal Aviation Administrator, emission standards for aircraft and aircraft engines. Such standards would be enforced by the Administrator in the certification and inspection of aircraft or aircraft engines pursuant to his authority under the Federal Aviation Act of 1958.

The Administrator would also be authorized to prescribe standards governing the composition of any aircraft fuel or fuel additive for the purpose of achieving the aircraft emission standards established by the Secretary of Health, Education, and Welfare. The authority of the Secretary to establish emission standards would preempt State authority to establish or enforce any aircraft emission standards.

Under present law the Secretary does not have authority to establish such standards although the aircraft industry has voluntarily agreed to abate smoke emissions.

Furthermore, the legislation contains special provisions to combat pollution from Federal facilities. It directs Federal agencies in the executive, legislative, and judicial branches to comply with applicable Federal, State,

interstate, and local emission standards. The Secretary is authorized to exempt any facility on a year-by-year basis. The Secretary is to report each January to the Congress all exemptions granted during the preceding calendar year, together with the reason for granting each such exemption.

Instead of exercising leadership in controlling or eliminating air pollution the Federal Government has tended to be slow in this respect. The foregoing provisions are designed to reverse this tendency. The level of appropriations available for the modification of Federal facilities to eliminate or reduce air pollution has been inadequate.

The committee hopes that the Administration will seek and the Congress will provide adequate appropriations to remedy this unfortunate situation.

The legislation would extend authorizations for appropriations through fiscal year 1973. The bill authorizes appropriations for the fiscal year 1971, totaling $200 million, for the fiscal year 1972, $250 million, and for the fiscal year 1973, $325 million. Of these amounts, $75 million for 1971, $100 million for 1972, and $125 million for 1973 are earmarked for research relating to controlling pollution resulting from the combustion of fuels. These authorizations constitute a substantial increase over and above the level of appropriations authorized during the preceding years. The highest amount authorized for any one fiscal year—fiscal year 1969—was $185 million.

The Subcommittee on Public Health and Welfare held extensive hearings on the problems dealt with in this legislation. The provisions of the bill were fashioned on the basis of the testimony received in these hearings. I am proud to say that the subcommittee has done an outstanding job and our full committee found it necessary to make relatively few changes in the bill reported unanimously by the subcommittee. Our full committee likewise voted unanimously to report the bill, although three members of our committee, as will be seen from their additional views appended to the committee report, would have liked to have gone still further than the full committee felt was warranted at this time.

I hope the House will give its support to this legislation so that the war against air pollution in the United States may be speeded up, expanded and intensified, and that the air we breathe throughout the Nation will be wholesome once again.

Mr. Chairman, I will say to the Members of the Committee of the Whole House on the State of the Union that this is a very strong bill, as strong as it could be made at the present time. Undoubtedly, as time goes by there will be more stringent laws and standards and requirements. I think it is a good bill. I think it has been well considered by the subcommittee and, as I said, the hearing started back in December and ended in April. I think they did a good job and I recommend the passage of the bill to the House.

Mr. MAHON. Mr. Chairman, will the chairman yield?

Mr. STAGGERS. Yes, I yield to the gentleman from Texas.

Mr. MAHON. I represent an area which has a number of cotton gins. There are also carbon black plants in the area. The operators of these industrial establishments have some concern about legislation relating to clean air. Of course, I think we all are very much interested in doing whatever is reasonably possible to improve the quality of the air in the United States.

In the opinion of the chairman of

the committee, is there anything in this bill that would tend to be confiscatory at all with respect to an industry such as the ones to which I have made reference?

Mr. STAGGERS. In response to the gentleman from Texas I would say this, that the States must set up a plan which must meet the Federal standards established by the Secretary. In establishing the emission standards I am sure the States will take into consideration the particular problems of air quality control which exist in particular areas. This question will be left up primarily to the States.

Mr. MAHON. I thank the gentleman.

Mr. STAGGERS. There will have to be ambient air quality standards for all of America and these standards which the States will have to meet will be set up by the Secretary.

Now, Mr. Chairman, in response to the statement of the gentleman from New York [Mr. FARBSTEIN], I might say any State can have more stringent ambient air quality standards if they want to. If a State plan is presented to the Secretary, to carry out such stricter standard, I am sure it will be approved. I hope the gentleman is listening because no one is preventing any State from having stronger standards and a State plan designed to carry out such standards.

We would hope that this will take care of any State that says they have peculiar problems. We are not holding them back, but we say that all of the States must comply with the nationwide standards. We think that at the present time this is the best we can do. If any State wants stronger standards, we think it will know best what it should do and how far it should go. But if any State does not come up with a State plan to the satisfaction of the Federal Government then the Federal Government will step in and establish a plan for such State.

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Mr. FARBSTEIN. Mr. Chairman, will the gentleman yield further?

Mr. STAGGERS. I yield to the gentleman from New York.

Mr. FARBSTEIN. Mr. Chairman, can the gentleman from West Virginia envision the city of Detroit restricting the numbers of internal combustion engines? Does not the gentleman realize——

Mr. STAGGERS. Mr. Chairman, I would interrupt the gentleman from New York for just one moment because I want to answer that question, which is a question I know he wants to make a speech about, and that is automobiles.

But I would say to the gentleman that we do have standards here, and we will inspect, if necessary, each and every motor vehicle engine that comes off the assembly line to see that the engines that come off the assembly line meet the qualifications so as to be assured they will meet the emission standards. We will not just have the prototypes tested but the cars as they come off the assembly lines.

Mr. SPRINGER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in 1967 Congress passed a comprehensive air quality act which imposed duties upon the Federal Government and the States in regard to improving the air which surrounds us. It was a good law and it probably would work out if left alone. Since that time we have become increasingly impatient with delay in this vital area and so we are here today to reshuffle the cards and deal out new responsibilities. In doing so we must recognize that no law can create clean air. No governmental

organization, no bureau, no administrator can order clean air into being. It is a long process which is necessarily limited by what we know and the technology for attacking the problem.

Because we are impatient there has been a tendency to look for scapegoats. It is easy to point fingers at elements in our society and decry their activities as shortsighted and dangerous. It is more difficult to acknowledge that our environment is basically the result of all of us enjoying the way of life we have collectively developed. If we allow ourselves the luxury of electing victims of our ardor for changes and demanding results which cannot be achieved we will be undoing the cause of clean air rather than advancing it. As legislators we have a duty to look at the problem in the broadest way and choose solutions that will make ultimate sense. Probably no piece of legislation is perfect and Members of this House as well as individual citizens may honestly differ as to what can reasonably be accomplished at this time. We want to act boldly but we must not act rashly.

The bill which is brought to the floor today by the Commerce Committee is the best thinking of a group of your colleagues who have been wrestling with this problem in Congress for many years now. Legislation concerning clean air did not suddenly erupt a year or two ago. On the contrary, this House has passed progressively ambitious legislation in the field since 1955. In that year President Eisenhower suggested, and Congress passed, Public Law 84-159 which provided for research and technical assistance to States and communities in identifying and attacking air pollution problems. Research studies and congressional hearings went on over the next few years and the program was extended in 1959. A year later an addition to the legislation was made to recognize the emerging realization that automobile exhaust had become one of the major contributing causes of air pollution. During the next administration these auto exhaust studies were extended.

In 1963 the first general provisions for abatement and control were written into law. They were in the form of grants to encourage and assist local governments in attacking the problem and at the same time urging Federal installations to lead the way.

In 1965 Public Law 89-272 authorized the Department of Health, Education, and Welfare to prescribe national standards for motor vehicle emissions. In addition, research into control methods for sulfur oxides was launched. A year later we added assistance by way of grants to help run local control agencies as well as establish them.

Now we come to the Air Quality Act of 1967 which was the first attempt at a comprehensive control and abatement system. As I have already said it was a good law but we are determined today to move to act as rapidly as possible. The differences between present law and that proposed by the bill before us today I will point out as I go along.

At the present time HEW has the responsibility for solving the scientific problems. There is much that we must know about the very nature of pollutants and how they affect us and our environment. Out of about ten major pollutants HEW has now been able to pin down half and tell us just what they do that is hurting us. The next responsibility of the Federal Government is to look for ways to cut down or eliminate these pollutants without closing down the entire store. Armed with this information, regional commissions decide what overall

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standard of air quality is desirable for their regions. H.R. 17255 will change that by having HEW set up national air quality standards. As the scientific details emerge and the control methods are developed, the air quality standards for the entire nation will be adjusted accordingly. This change is desirable because it is a natural and logical one. The basic quality of the air for which we strive should be uniform. Let it be understood that the air quality standards is the target at which we shoot with all of the control machinery eventually devised.

It was recognized in the present law that air quality and even control efforts do not break down neatly into political boundaries. For that reason interstate regions were comtemplated as the norm. The only trouble with such efforts is that they are by nature cumbersome and slow to develop. This bill would make each State a region. In that way there are immediate lines of communication and authority to translate information into action. This does not mean that interstate arrangements cannot be made. They can. Furthermore, existing regional machinery may be retained where States have gone ahead and tackled the problem on a cooperative basis.

The success of the entire effort depends upon what is done to meet the national air quality standard at the local level where the pollution is actually created, emitted and breathed by our citizens. The bill therefore provides that State governments will create plans for the implementation and enforcement of the air standards. In fact a State may declare more stringent standards if it feels it necessary. Such plans for cracking down on the sources of pollution must be forthcoming within 180 days. If a State hangs back and fails to move out, the Federal Government will take over and make rules and regulations amounting to a State plan. Machinery for forcing a plan upon a State is spelled out including penalties of $10,000 a day for failing to act. In addition, authority is granted to inspect establishments to check up on the plan. This latter authority is new in the bill now before us and should expedite performance or enforcement.

It has been the philosophy of the law up to this point that State and local agencies should determine the exact methods and procedures for controlling emissions by installations. This is not basically changed by this bill. It does, however, contemplate that new stationary sources which are especially hazardous to health will have Federal standards. Although it is a departure, it is sensible. Since the Federal Government is determining the air quality target and working constantly on control techniques it is the best position to have them make a decision about new sources. Stopping these extraordinary problems before they develop is best for the antipollution effort and it is also best for those who would build such installations and then find they could not operate.

Motor vehicles are a popular villain in the piece, and rightly so. Control devices have come a long way in the last few years. Better control must be achieved. But it is also imperative that we get the most out of the standards already in effect. Testing a few until they seem allright and then certifying an entire run of the automobile models so equipped is not very smart. The real test for progress in this field is the quality of control on the cars which roll off the asembly line and end up on our main streets and in our driveways. Recognizing this, perhaps belatedly, this bill will provide for production line testing. As a followup, States will be required

to inspect cars after they are on the road as soon as practical means for such inspections are available.

Much has been said about getting the lead out. Perhaps a crash requirement to delead gasoline would result in dramatic improvement in air quality. I seriously doubt that it would be all that great. There may be other ingredients or additives in gasoline which are equally harmful. Legislating lead out of gas might get rounds of applause in some

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quarters but is hardly the way to go about it. The bill gives authority to HEW to limit the ingredients in fuels if such ingredients can be identified as the culprits which impair health or make automobile control devices roll over and die. This authority coupled with the intensive efforts in fuels research should help eliminate the more dangerous ingredients and at the same time perfect better and safer fuels for automotive purposes.

Aircraft are being watched closely of late. Some models spew out a prodigious stream of smoke. It should be eliminated as rapidly as possible. This bill allows for emission standards to be set for aircraft engines. Airlines have already recognized that their particular kind of pollution, whether a major contributor or not, is highly visible and not the best advertising. Already most airlines have agreed to replace or refit their engines with devices which have been developed in the last year to render them relatively smokeless.

One of the frustrating aspects of air pollution legislation is the presence of large Federal installations either operated directly by the Government or under its direction which contaminate the atmosphere on a large scale. How can we expect cooperation or credibility for the governmental effort when the installations controlled by Uncle Sam are some of the worst polluters? The Federal Government as much as some private businesses has dragged its feet for purely economic reasons. Allowing the Government to remain immune from the rules which we wish to impose on others is wrong. Actually it should lead the way. Recognizing the real considerations of national security might intervene in certain cases this bill requires Federal installations to meet whatever standards those around them must meet and allows for exemptions on the very limited basis of a year at a time. I know that our colleagues on the committee will be watching closely the use of this exemptive authority. We expect that localities which harbor Federal installations will also be watching and reporting to use their compliance or lack of it.

To carry out the ambitious programs outlined here will cost money. It is a lot of money and yet there will be some who will feel it is far too little. This is not an effort on which you can pour a bucket of money and thereby have instant clean air. It must be done in some kind of logical order and only so much can be done in a year no matter how much is spent. The committee feels that the authorizations contained in this bill represent sensible but still generous goals for spending and accomplishing in this field. For the vital fuels research to which I referred earlier it provides $75 million for fiscal year 1971, $100 million for fiscal year 1972, and $125 million for fiscal year 1973. All other activities described will take $125 million in fiscal year 1971, $150 million in fiscal year 1972, and $200 million in fiscal year 1973. At that time we will again analyze our progress in all respects. If we have devised a workable system here—and I

think we have—the progress in these next 3 years should be dramatic.

The committee worked very hard to come here with a bill you can accept and be proud of. In my opinion it is the best and most balanced approach which could be devised. Its pieces fit together and should be taken as a whole. I know that many people have great feeling about certain parts of this effort and this problem to the exclusion of other parts. As a committee and as a Congress we cannot be thus diverted. We must attack the problem across the entire front and this bill does so, giving due emphasis to all elements. I recommend H.R. 17255 to the House.

Mr. SCOTT. Mr. Chairman, our health is dependent on the cleanliness of the air. But our air, especially in heavily populated areas, is becoming increasingly polluted. And we have only to read the forecasts of population experts to realize that—in the near future—virtually every area of the United States will be heavily populated. Therefore, unless we change things, the country will soon have heavily polluted air.

Mr. Chairman, we have seen action before here in Congress to clean up our air. In 1967 we passed the Clean Air Act, but it just has not done what we had hoped it would.

Let us hope that H.R. 17255, as reported out by the Committtee on Interstate and Foreign Commerce, will do the job.

Over the next 3 years, it would provide more than three-quarters of a billion dollars in additional Federal funds—and nearly half of that, Mr. Chairman, would go for research into better ways to clean up automobile fuels and engines which, in combination, cause 60 percent of our air pollution.

The bill provides stringent penalties for those found guilty of air pollution and, perhaps even more important, streamlines the process by which such persons can be moved into our courts.

The bill centers responsibility for setting clean air standards—and enforcing them—with the State Governors and with the Secretary of Health, Education, and Welfare. It designates the States and allied geographic areas as air quality control regions and requires them to adhere to at least minimum standards of air quality. It requires extensive testing of new auto engines—not only in prototype but in production, too. It forbids the creation of new stationary sources of air pollution unless they adhere to strict standards. And it provides—for the first time—for the creation of emission standards for aircraft engines.

Mr. Chairman, I support this legislation. I hope it will succeed where previous legislation has failed.

Mr. SPRINGER. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia [Mr. THOMPSON].

Mr. THOMPSON of Georgia. Mr. Chairman, I thank the gentleman for yielding. I will not take the 5 minutes, but I do rise in support of this legislation.

We are all very much aware of the problems of some of the major cities so far as air quality is concerned. The gentleman from Illinois has very adequately and in detail explained the provisions of this particular act.

What we are doing today is in effect answering the needs of the public, answering the cries of the public that legislation be enacted which would guarantee not merely the present generation but future generations that we will have a clean environment, that the air they breathe will be free of noxious gases, and that there will be no people in any city, in effect suf-

focating and contracting respiratory diseases because of dirty air that exists through failure of Government to operate.

So the standards that are being established by this act are not only reasonable standards, but they are necessary. They are necessary to give us the protection for our future. They operate in conjunction with our local governments. They provide that where there is an area of the country in which several States may be involved, we can have a regional clean air area and thus more efficiently and effectively provide for clean air standards throughout the United States.

This is needed legislation. It is good legislation, and I think it will receive the overwhelming support of the Congressmen not only in the House but the other body as well and also the American public.

Mr. SPRINGER. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. REID].

Mr. REID of New York. I thank the distinguished gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 17255, the Clean Air Act Amendments of 1970, and H.R. 11833, the Resource Recovery Act of 1970.

The authority given to the Secretary of Health, Education, and Welfare under the clean air amendments to establish nationwide ambient air quality standards is essential if we are to restore clean air to this country in the foreseeable future. In the past, States have played leading roles in the attack on air pollution, but it appears that some States are now falling behind. Beyond that, air—clean or dirty—does not respect political boundaries and a unified nationwide attack is necesary if progress is to be made.

Stricter enforcement procedures, new Federal emission standards for new stationary pollution sources, and controls on pollution from Federal facilities are all necessary steps and I am pleased to see them included in this bill. Many of these provisions were included in H.R. 17090, Clean Air Act amendments which I introduced on April 16, 1970.

However, there is a major omission in the committee bill and I strongly support the amendment to be offered to close this loophole. In its provisions on fuel composition, the committee bill fails to include the ban on lead in gasoline which I feel is essential to cleaner air. While it does not include an outright ban, the bill proposed by the administration would give the National Air Pollution Control Administration the authority to ban lead as well as other additives in gasoline.

The administration bill is superior to the committee bill with regard to fuel composition in four other respects as well: First, the administration bill covers all fuels, not just auto fuels as the com-

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mittee bill does; second, while both bills provide for regulation of fuel composition to eliminate adverse effects on public health and welfare, the committee bill requires that no fuel composition regulations may be established if the health danger can be remedied through increased auto emission standards. This is a serious failure to make the oil industry take action in the public interest; third, the administration bill does not require the rigorous medical and scientific evidence stipulated in the committee bill before action may be taken; and fourth, the administration bill gives NAPCA necessary authority to procure the fuel additive pollution research it needs from the industry.

I am pleased that the administration has taken such a strong and vigorous stand on the critical matter of fuel composition, and heartily support the amendment to be offered to substitute the administration provisions on fuel composition for the weaker committee version.

The three other amendments to be offered—adopting California's auto emission standards as the nationwide minimum, authorizing NAPCA to conduct voluntary testing on autos that have been driven 4,000 miles, and providing for the gradual adoption of standards based on the most pollution free propulsion system available —are also necessary to a meaningful fight on air pollution.

I am hopeful that the Congress will adopt these rigorous standards and thereby serve notice on the fuel and automobile industries that this Nation intends to do more than talk about cleaning the air. Restoring the clarity of our skies is more than an esthetic goal—it is essential if we are not to modify our weather inadvertently and if we are not to exacerbate the lung and breathing illnesses from which too many Americans already suffer. Indeed, New York City today announced that it was in a "high pollution forecast stage" because of stagnant weather conditions. Surely we cannot wait any longer to take steps to prevent this situation.

Finally, Mr. Chairman, I would just say that there has been some research in the State of New York with regard to lead emissions, particularly on submicroscopic particles. Dr. Vincent Schaefer of the State University in Albany estimates that each auto at normal idling speed turns out about 100 billion particles per second. I am told further that some of these particles find their way into the lungs of human beings, and, indeed, when individuals smoke, it is possible that this lead may, in fact, be vaporized in the lungs. I know not the ramifications of this, but it does seem clear to me that it is important to study very carefully the need for very stringent standards in terms of lead. Yet, in just breaking up the larger particles but not necessarily seeing that there is combustion of the small particles, we may be creating a problem for which we have no real conception as to its implications.

Mr. Chairman, I think this bill is a very distinct step forward. Its passage is essential to heeding President Nixon's call to restore our environment.

Mr. SPRINGER. Mr. Chairman, I yield to the gentleman from Kansas [Mr. SKUBITZ] such time as he may consume.

Mr. SKUBITZ. Mr. Chairman, achieving the objective of clean air for our entire country is an expensive and a slow process. We would like to have it done tomorrow but the realities of life do not allow for that. We do want to be sure that it will come about. The Air Quality Act of 1967 was a comprehensive bill which was designed to bring it about in due course. Today we feel that certain revisions of the scheme set forth in the present law are necessary to speed up the process somewhat further.

The bill before us today should do that. In the process it will spend as much as $775 million over the next 3 years but many of the changes that are being made will expedite the process we believe in other ways than the expenditure of funds.

This bill provides for the creation of national air quality standards as opposed to regional standards in the present law. As new scientific data is produced the standards can be revised with a minimum of administrative holdup by having national stand-

ards. Hereafter each State will be designated as an air quality region. Although States may cooperate and interstate regions already in existence may remain, this new arrangement simplifies the chain of command and puts State governments directly in the line from information to ultimate action.

The Federal Government will now set specific emission standards for new stationary sources of pollution which present unusual and special health hazards. Motor vehicle emissions will be tested on a spot basis at the assembly line rather than depending upon the test results from a few prototype engines. This should insure that the vehicles on the road are as efficient as those initially tested.

Automotive fuel can be regulated as to its ingredients. This is another way of saying that if it actually is a practical thing, the Government can require that the oil companies get the lead out.

Standards for aircraft engines will be set and the airlines, recognizing the handwriting on the wall, have already agreed to use cleaner engines in their new planes and to eventually retrofit the planes on the line.

In addition to all the things that are going to be required from private business, for the first time we are saying without equivocation that Federal installations are going to have to live up to the rules that the Federal Government makes for others. As in everything else the Federal Government must have an out for exceptional circumstances, and the Secretary can exempt installations for good cause shown but only for a year at a time. I certainly hope that the executive branch will turn the screws down on its own operations and that the Congress and specifically our committee will watch carefully that the Government is not fudging on its own rules. I for one promise to keep an eye on it.

In my opinion the bill before us today is a great improvement over the present law and I recommend its passage.

Mr. SPRINGER. Mr. Chairman, I have no further requests for time, and I reserve the balance of my time.

Mr. JARMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am very proud that the Subcommittee on Public Health and Welfare has been responsible for producing this important piece of legislation which will be of tremendous benefit to the American people. Our subcommittee began hearings as early as December of last year in order to determine why progress in the war against air pollution under the Air Quality Act of 1967 has been so slow.

In our early hearings, we concentrated on automotive air pollution which constitutes 60 percent of the air pollution problem in the United States. We heard departmental witnesses and witnesses from the automobile industry. It became apparent from their testimony, that important changes would have to be made in automotive emission standards in order to reduce pollution from motor vehicles. It also became apparent that more stringent testing would have to be done of new automobiles in order to assure that they will achieve the stricter emission standards. Furthermore, new technologies would have to be developed in order to achieve these standards and the composition of motor vehicle fuels might have to be modified in order to make the operation of the new antipollution equipment possible.

Our subcommittee during its subsequent hearings in March and April heard numerous witnesses from the

automobile, as well as the petroleum, industries who gave us their considered judgments as to what would have to be done in order to reduce automotive pollution.

The bill which we have brought to the House today represents our best judgment as to what is necessary to come closer to the goal of assuring the American people of clean air once again.

The able chairman of our full committee, Mr. STAGGERS, has already given you the broad picture. Let me, therefore, concentrate on giving you some additional details with regard to the provisions of the bill. Under the bill, the Secretary of Health, Education, and Welfare will be authorized and directed to establish nationwide ambient air quality standards. The States will be left free to establish stricter standards for all or part of their geographic areas. Under present law, ambient air quality standards are to be adopted by the States on the basis of criteria set forth by the Secretary.

By authorizing the Secretary to establish nationwide standards based on the criteria developed by him for various pollutants, the war against air pollution will be carried on throughout the Nation rather than only in particular geographical areas. Furthermore, unless a State desires to set stricter standards, the time that would be consumed by such States in adopting ambient air quality standards will be saved.

The bill provides for the establishment of air quality control regions by declaring each State as an air quality control region. However, the Secretary is authorized to establish interstate air quality regions for the purpose of dealing with air pollution problems of an interstate nature. Existing interstate regions remain in effect.

Under present law, the Secretary is [p. 19208]

directed to establish air quality control regions but only a few such regions have been established thus far. Consequently, actual air pollution enforcement activities have been delayed excessively. Additionally, the proposed regions are not contiguous and, therefore, do not cover the entire United States.

By making each State area an air quality region, the time consumed in establishing such regions on a selective basis will be saved. By dividing the entire United States into contiguous air quality regions, the war against pollution will be carried into every part of the United States.

For the five pollutants for which the Secretary already has established criteria: Sulfur oxides, particulate matter, carbon monoxide, hydrocarbons, and photochemical oxidants, proposed national standards would be issued within 30 days after the date of enactment of this legislation. With regard to other pollutants such standards would be proposed within 30 days after the criteria have been issued.

The legislation would revise the enforcement provision contained in present law. Within 60 days after promulgation of national ambient air quality standards, the Governor of a State may file a letter of intent that such State will, within 180 days and after public hearings, adopt a plan for the implementation—principally by prescribing appropriate emission standards—and enforcement of such standards. A State may adopt more stringent ambient air quality standards, and the Secretary may extend the 180-day time period for good cause shown but not to exceed an additional 180 days.

If a State fails to file a letter of intent or does not adopt a plan or

adopts a plan which does not meet the statutory requirements, then after reasonable notice, the Secretary may publish proposed regulations setting forth a State plan. The State within 30 days either may adopt such plan or may petition for a public hearing. The Secretary must give at least 30 days' notice of such hearing. Within 60 days after the hearing, the Secretary shall, on the basis of the evidence presented at such hearing, promulgate either the original or a modified plan.

If, as a result of a State's failure to enforce its plan, ambient air quality standards are not met, the Secretary is to notify the State and persons who violate the plan. If the State fails to act within 30 days the Secretary may request the Attorney General to bring suit to secure abatement of the pollution. The court may assess a penalty of up to $10,000 for each day during which any person fails to take action ordered by the Secretary to abate pollution.

The Secretary may inspect any establishment for the purpose of determining whether the State plan is enforced or whether the establishment contributes to or fails to take required action to abate pollution.

Under existing law, procedures are more complex and more time consuming, and no authority is provided for the Secretary to inspect establishments.

Perhaps one of the most significant provisions in the bill deals with the establishment of Federal emission standards for new stationary sources. The Secretary is authorized and directed to establish Federal emission standards for new stationary sources where emissions from such sources are extremely hazardous or where such emissions contribute substantially to the endangerment of the public health or welfare. The purpose of this new authority is to prevent the occurrence anywhere in the United States of significant new air pollution problems arising from such sources either because they generate extrahazardous pollutants or because they are large-scale polluters.

At present emission standards for stationary sources are established exclusively by the States.

The promulgation of Federal emission standards for new sources in the aforementioned categories will preclude efforts on the part of States to compete with each other in trying to attract new plants and facilities without assuring adequate control of extra-hazardous or large-scale emissions therefrom.

Such emission standards may be enforced either by a State as part of that State's plan or by the Secretary if a State fails to include such standards within its plan. The provisions for court actions to secure abatement and the imposition of penalties are comparable to the provisions described in section 4 of this legislation.

I have already mentioned the importance of automotive air pollution in the United States. Under the provisions contained in the bill, the Secretary is authorized and directed to test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or motor vehicle engine as it comes off the assembly line in order to determine whether the vehicle or engine conforms with the applicable emission standards. Such tests are in addition to testing the prototypes furnished by the automobile manufacturers for purposes of securing certificates of conformity. On the basis of the assembly line testing, the Secretary may suspend or revoke any such certificate in whole or in part. Hearings on the record are to be conducted by the Secretary at the request of any manufacturer who desires to challenge the Secretary's

decision to suspend or revoke a certificate, but such hearings shall not stay the suspension or revocation. Determinations made by the Secretary on the basis of such hearings are subject to judicial review.

Experience has shown that the testing and certification of prototypes does not of itself assure that automobiles coming off the assembly line which are sold to the public comply with the Federal emission standards. Therefore, the legislation authorized inspection of assembly plants and the testing of automobiles and engines coming off the assembly lines.

Additionally, the legislation provides that States must require inspection of motor vehicles in actual use if the Secretary, after consultation with the State, determines that the achievement of ambient air quality standards requires such inspection and that such inspection is technologically and economically feasible.

Your committee is aware that low-cost, easily operated instrumentation techniques for such inspections are not available at present. Since automobiles account for 60 percent of the air pollution problem in the United States and since new antipollution devices must be developed and installed on automobiles to meet more stringent emission standards, it will be necessary also to develop more effective measuring devices to make possible inexpensive and efficient tests.

The Secretary, therefore, is directed to conduct research and development activities with respect to low-cost instrumentation techniques to facilitate the measuring of automotive emissions. The Secretary is directed to report to the Congress his recommendations for testing programs to assure that emission standards are met during the life of vehicles and engines.

The provisions which authorize the Secretary to establish standards for automotive and other fuels are likewise of great importance. The Secretary is authorized to establish limitations on—or providing for elimination of—ingredients of fuels—including additives—which endanger the public health or welfare or which impair the performance of emission control devices or systems on automobiles. Before imposing such limitations the Secretary is required to make certain specific findings as to the necessity of the imposition of such limitations.

Present law does not authorize the imposition of such limitations on automotive or other fuels.

I need not go into further detail on the provisions dealing with aircraft emission standards and pollution from Federal facilities because Chairman STAGGERS has already dealt with these provisions and, therefore, I can conclude at this point by asking the House to support this very worthwhile legislation. Our subcommittee has worked very hard on this legislation. All of the members of the subcommittee, including myself, are listed as sponsors of the bill (H.R. 17255) and it is my hope that this legislation will make possible substantial improvements in the quality of the air which we will breathe as the provisions of this legislation will be implemented and enforced.

Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. ROGERS].

Mr. FARBSTEIN. Mr. Chairman, will the gentleman from Florida yield in order that I may clarify something before he starts, so I will not interfere with his statement, or would the gentleman rather complete his statement and then have me ask the question?

Mr. ROGERS of Florida. Mr. Chairman, I will ask the gentleman to allow me to complete my statement. If we do not get into his question then,

we will get into it on the 5-minute rule.

Mr. Chairman, I strongly support this legislation. The committee has done an excellent job on the bill and is bringing to the Congress the most effective bill that I think could be proposed to clean up the air in America.

There has been much attention given

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law. The law has not been effectively in our Nation today. Unfortunately, this attention which has gained the general support of the entire population, has come at a very late date. We find ourselves in a position now of acting quickly to remedy our excesses or we will be forced to change our entire life-style.

For scientists of almost every discipline have told us that we cannot go on polluting our environment and expect to continue living as we are today. Even today we are forced to do things differently than our ancestors because we have fouled our environment.

Air pollution is one of the most pressing forms of pollution because unlike others, the air around us is unavoidable. We do not have to swim or look at dying lakes. But everyone must breathe.

It is one thing to think of clean air for the beauty of it. After all, the pictures of smog over our major cities is a national disgrace.

But it is much more serious than that. Clean air in some parts of our Nation is in such short supply that, if we continue along the same lines which we have for the past decade, we have been warned that mass deaths may result in this decade. Other experts forecast that residents of our major cities may have to wear gasmasks, while others tell us that the layers of smog are creating a wall between the Sun and the Earth so that sunlight may be blocked, in whole or in part, thus affecting the temperature of the earth and the growth patterns of our vegetation.

Indeed, these forecasts are already ringing true. Doctors in California blame pollution for the rising number of deaths from emphysema. And in Los Angeles, 10,000 people have been advised to move elsewhere because of the adverse effects of smog on their respiratory systems.

The chief culprit in the air pollution story is the automobile. Between 55 and 60 percent of the problem is traced to the auto and in heavily populated areas this figure is much higher.

It is estimated that the automobile annually dumps about 90 million tons of pollutants into the air. In 1967 we thought we had started an effective program which would reduce auto pollution, but found differently during hearings.

Dr. John Middleton, the Director of the National Air Pollution Control Administration, testified that between 70 and 80 percent of the automobiles tested during one study failed at least some portion of the standards. This, in effect, means that we, the public, are paying for antipollution devices which are not working to the standards set out by the Secretary.

If Members want to clean up the air in America, they will vote affirmatively for this bill.

Mr. Chairman, we have changed the concept from the 1967 law, which all of us were not pleased with, particularly the administration of the to the many forms of pollution administered. The provisions of the law were not even enforced. For instance, under the law, fuel was supposed to be registered. But this was

never done and I do not know why.

We did not have an adequate testing program for automobiles, and used only four prototypes to determine if the standards were being met by a particular manufacturer. And, instead of taking each result on a separate basis, they were using an average on the four prototype automobiles. We are changing this and saying that each prototype automobile must meet the standard itself—not be averaged. We are also going to have the daily inspection of the assembly-line production so that we will get to this problem of cleaning up the auto emissions.

In changing the theory of the legislation, we go from setting up little air regions to national air standards. To show how effective the law has been since 1967, I would note that there has been only one interstate region approved. When the law was passed, we envisioned more than 75.

I believe they now say there are 17 regions approved by HEW. That does not mean 17 states; it means 17 parts of States in most instances. That is about what has been accomplished. HEW says they may get up to 70 by the end of the summer. This entire procedure is too ponderous and needed to be changed, so the committee in this bill has changed it.

The Secretary of Health, Education, and Welfare under this legislation will set a national air quality standard for ambient air quality. This is a standard that will be for the whole Nation, to assure clean air to the American people based on criteria, scientific information as to how many parts per million are permissible for particular pollutants. Five of those criteria have already been determined by scientific and medical evidence, and they have been published.

From that, then, the national standard will be established. And these will be published 30 days after the passage of this law. Under the present law the approach has been by regions proceeding with hearings to determine whether there should be a region here or there. The committee has cut across that time-consuming process. We say now that every State is a region, right off, so that we can begin to effectively administer the law.

The air quality standard established by the Secretary must be carried out by the States, according to a State plan. This State plan will implement the air quality standard by setting emission standards and controls within the State to control those pollutants, in order to meet the overall quality air standard. This will be true in every part of the Nation.

Each State plan will be submitted to the Secretary. If the Secretary does not think the plan meets the need, it will go back. If it is not then corrected, the Secretary himself will have the authority to go in and set the plan. Further, if the law is not enforced by the State, the Secretary may go in and enforce it, or go through the courts for injunctive relief or whatever the equities of the case may allow.

Now, as to stationary sources, those in existence will be met that way, through the State plan by its emission controls to meet the air quality standard. As new factories are built, the Secretary will be permitted the right to set emission standards; not just a quality of air standard but emission standards, so that we know that new sources of pollution will not develop.

Where there is a particular hazardous substance, the Secretary can also go in.

This takes care, basically, of stationary sources.

On the automobile, the Secretary

will be given the right, of course, to continue emission standards.

The CHAIRMAN. The time of the gentleman from Florida has expired.

Mr. STAGGERS. Mr. Chairman, I yield the gentleman an additional 5 minutes.

Mr. ROGERS of Florida. Mr. Chairman, some say we ought to do just like California. The gentleman from New York is concerned.

The Secretary now has the authority to put whatever standards he believes are necessary for the safety of the American people into effect, and the 1975 standards are the same, as I understand it, as those of California. It has been true that California has advanced its standards some over what the Federal Government has, but this does not mean that the Federal Government right now cannot change its standards immediately.

I presume, after the passage of this bill, and the interest indicated by the Congress, the Secretary probably will even increase those standards where he feels it is feasible.

I think all of the authority that the Secretary needs is already on the books. We are now giving him more authority to correct the emission standards in the factory, by daily inspection on the assembly line.

Furthermore, we allow him the right to go in and say that this is not just a device problem but it may also be a gasoline problem. We then give the Secretary the right to go in and say, "You cannot put this additive in the gasoline if it affects the public health" or—because it is not just public health that is involved—"or on the further ground if it will prevent emission standards from being met."

What many people are forgetting is that this is really a problem of two industries. It is the combination when they come together that produces the problem. The Secretary now can set any emission standards he wants coming out of that automobile. And nothing comes out of the tailpipe until the fuel goes in. So he can control anything he wants right now, basically, through emission standards on what is coming out of the tailpipe of that automobile.

Mr. FARBSTEIN. Will the gentleman yield?

Mr. ROGERS of Florida. Yes; I yield to the gentleman.

Mr. FARBSTEIN. The fist question I would like to ask is with relation to your statement that there is inspection at the time that the automobile is produced on the assembly line. According to information I have received, auto engineers say it is almost impossible to judge if a device works until after the vehicle is broken in after approximately 4,000 miles, and while assembly line inspec-

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tion can test individual devices for quality control, no opportunities exist to see if the device actually works in operation. It has been held that over 53 percent of the devices have been found to have broken down and been of no use after 11,000 miles. What good is there to an inspection at the assembly line, then?

Mr. ROGERS of Florida. Evidently the gentleman does not understand the inspection process. What I would say to him is, first of all, your prototypes are those that have been run 50,000 miles, so the devices, first of all, are proved prototypes. This is 50,000 miles and not 4,000 miles. We are requiring all of the prototypes meet all of the standards.

Mr. FARBSTEIN. But how about an automobile that has never had a prototype?

Mr. ROGERS of Florida. Let me finish.

We are also incorporating the further testing and the further assurance to the public by requiring that the testing is done from the assembly line every day. As soon as something shows up the Secretary can go in there and lift a certificate and those cars cannot be sold in interstate commerce until the matter is corrected. They can then be tested and, when the Secretary determines that the car or cars meet the standard, he will immediately certify that tested car. So the gentleman can be assured that this legislation will be carried out.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Chairman, I yield the gentleman 3 additional minutes.

Mr. ROGERS of Florida. I think, if people will study this bill, they will see that we have incorporated effective provisions to reach the automobile. I also feel the Secretary should use the Government automobiles for testing. And if a pattern of failure develops, then I think the Secretary should make a public announcement of this. This will put public attention on any failure and bring appropriate action.

Also, we go into the airplane problem. We allow the Secretary to set emission standards for airplanes which are to be administered by the Federal Aviation Administration, keeping in mind safety features.

Furthermore, we have a provision about Federal-installation polluting. We direct that all Federal installations, who, incidentally, are some of the biggest polluters in this Nation, shall abide by the pollution laws, and the only way they can get an exception is to go to the Secretary. That exception cannot be granted for more than 1 year and then the Secretary must explain to the Congress why he granted that exception. In other words, this is telling the Federal agencies: "We want you to stop polluting the air, too."

Now, we have strong enforcement provisions in the bill. We have the most rapid means which I know of bringing in States with complete authority to get things done. If the States will assume this responsibility —and I think they will under this legislation—we are going to have clean air in this Nation. If they do not, we are still going to have clean air, because the Federal Government is going to come in and clean up the air if the States do not meet their responsibilities.

Mr. HECHLER of West Virginia. Mr. Chairman, will the gentleman from Florida yield?

Mr. ROGERS of Florida. I yield to the gentleman from West Virginia.

Mr. HECHLER of West Virginia. I am sure the gentleman from Florida is aware that, under existing legislation, many conferences have been held on pollution, out of which certain recommendations have come. What is going to happen under the new legislation to those recommendations emerging from conferences already held?

For example, the conference procedure has dragged out for over 3 years in the Marietta, Ohio-Vienna, W. Va., area, we have finally arrived at some recommendations and hope all this time is not lost.

Mr. ROGERS of Florida. Actually, what we did in the present bill is to allow any regions that have been performing under the law to continue to do so where progress has really been made. However, the chairman of the committee has already agreed that we would add clarifying language to the bill along this line.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Florida. I yield to the gentleman from West Virginia.

Mr. STAGGERS. I propose to offer this amendment on this subject later on.

Mr. ROGERS of Florida. I think this will clarify the question of the gentleman from West Virginia.

Mr. HECHLER of West Virginia. Mr. Chairman, if the gentleman will yield further, I have one more brief question. We have miserably failed to prevent air pollution by trying to apply the laws now on the statute books. Polluters have used every opportunity to delay and there has been a long, drawnout procedure which has frustrated public eforts to clean up air pollution.

Is there any injunctive process under this pending legislation which will immediately force abatement of an air pollution source?

Mr. ROGERS of Florida. This authority is contained in the bill, that the Secretary can go into the court for the abatement of pollution. So, the authority is in the bill now providing for this type of court procedure.

The CHAIRMAN. The time of the gentleman from Florida has again expired.

Mr. STAGGERS. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. HECHLER of West Virginia. Mr. Chairman, if the gentleman will yield further I am still concerned about whether polluters can be enjoined. What the gentleman from Florida is saying, then, is that this court procedure will not in itself constitute a long drawnout delay of pollution abatement, is that correct? We must have speedier action to obtain clean air.

Mr. ROGERS of Florida. Well, of course, I do not know how long it will take for the court to act, but an injunctive procedure is very rapid in obtaining a determination of the question. I think it is about as rapid an attack on the problem as we can get. I think the gentleman from West Virignia will be very pleased with this legislation. It is going to clean up the air.

Mr. FARBSTEIN. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Florida. I yield to the gentleman from New York.

Mr. FARBSTEIN. On page 40, section (2) (a) I understand that the administration's proposal originally required that the representative sample failed to meet the test for emission standards, the whole class of automobiles would be revoked and the certificate would be revoked? Now, suppose a representative sample under the present law of the production code does not meet the standard of emission, can the Secretary revoke the certificate for a whole line of cars, or just the one being tested?

Mr. ROGERS of Florida. In other words, if your representative sample coming off the daily production line does not meet the standard he can raise and withdraw the certification for that whole assembly line production.

Mr. FARBSTEIN. That is all I want to know.

Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. ECKHARDT].

Mr. ECKHARDT. Mr. Chairman, first I want to recognize the work that has been done by the chairman of the full committee and by the gentleman from Oklahoma (Mr. JARMAN) as well as the gentleman from Florida who just spoke in framing what seems to me to be a most adequate and strong act to control air pollution.

I have a question that I should like to propound to the chairman at this time:

Since the bill has two provisions that seem to me to be its salient factors strengthening the present law, it seems to me it is well to know precisely what these do. The first factor, of course, is the provision by which the Federal Government establishes ambient air standards. This of course did not exist in the previous bill.

The other salient factor strengthening the present law that seems to me to be an extremely effective new method of controlling air pollution is control of emissions from new sources.

First I should like to ask the chairman whether a new source necessarily means new equipment, or whether a new source may include an altered or increased effluent from a plant?

It is my understanding that the legislation grants authority to the Secretary of Health, Education, and Welfare to establish emission standards for any such sources which, either in the form of entirely new facilities, or in the form of expanded or modified facilities, or because of expanded or modified operations or capacity, constitute new sources of substantially increased pollution?

Mr. STAGGERS. That is true, I say to the gentleman, and that is the intent of the committee in passing the legislation. And I want to make it perfectly clear that this was the reason for putting a specific statement into the report as to what the intention of the committee was.

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Mr. ECKHARDT. I understand that that is clearly spelled out in the report.

Mr. STAGGERS. It is.

Mr. ECKHARDT. Therefore, it would appear to me that, for instance, an old steel plant which altered its production in a particular unit or operation, even though that unit was an old unit, would be controlled just as its competitor, a new steel plant, would be controlled, where new equipment plus new sources of emission occur?

Mr. STAGGERS. That is correct.

Mr. ECKHARDT. I thank the chairman.

Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. VAN DEERLIN].

Mr. ANDERSON of California. Mr. Chairman, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman from California.

Mr. ANDERSON of California. Mr. Chairman, I wish to thank the gentleman for yielding.

I commend the committee for putting its attention to the problem of air pollution, but I feel that we can, and must, strengthen the provisions in H.R. 17225, the Clean Air Act Amendments of 1970.

Air pollution continues to darken our cities' skies and threaten our total environment with its poisonous chemical mixtures.

The primary contributor to this pollution is the automobile which accounts for nearly 80 percent of the air pollution in our cities. The automobile is responsible for dumping into the atmosphere each year more than 90 million tons of pollutants; this is twice as much as any other single contributor. If air pollution is to be curtailed, dangerous emissions from automobiles must be substantially reduced.

To combat the problem of vehicular air pollution the Federal Government is issuing emission control standards, but the present approach is inadequate for a number of reasons. Studies have shown that under existing controls automobile air pollution in the United States will more than double in the next 30 years. This is due to the projected increase in both the

number of vehicles and the miles driven by each vehicle.

Only California has adopted emission standards which will stabilize air pollution and control the production of oxides of nitrogen. But, we want to not only stabilize air pollution, we want to eliminate it.

We have an immediate and pressing duty to protect the health of the American people by curbing dangerous vehicular air pollution. It is clear that present efforts to curb pollution by regulating new car emission levels are wholly unsatisfactory. Therefore, we must take immediate steps to encourage the development of low-emission vehicles.

Legislation, such as the bill (H.R. 14534) which I have cosponsored, would require Federal procurement of low-emission vehicles, thus fostering development of nonpolluting vehicles. By offering legislatively guaranteed markets, a reasonable rate of initial production is possible. Such a proposal would make the nearly 400,000 vehicles now used by the Federal agencies a guaranteed market for low-emission vehicles. In 1968, the Federal Government spent $26 million for the purchase of about 16,000 passenger cars and $129 million for nearly 46,000 buses, ambulances, and trucks. Under the procurement plan limitations, the total additional yearly costs cannot exceed $34 million. This additional cost is a small price to pay for alleviating the dangers of air pollution and for preserving a life-sustaining environment.

In addition, Mr. Chairman, I feel that we should put Detroit on notice that they must develop a low-emission vehicle. Last year, the California, Senate passed a bill which would ban pollution causing engines in new motor vehicles after January 1, 1975. The bill died in the assembly. Similarly, I have introduced a bill, H.R. 17516, which is identical to the California bill.

We must strengthen our laws in order to eliminate air pollution. Our health and our very existence depend on our action.

Mr. VAN DEERLIN. Mr. Chairman, I thank my colleague from California for his comments, and I am glad the gentleman was here because his is a district which knows a great deal about the problem to which we address ourselves today.

As a matter of fact, there are occasions today when the unclean air from the gentleman's district sometimes wafts its way as far southward as the otherwise salubrious city of San Diego. And even there, we are learning something about what they have suffered for many years in Los Angeles.

Mr. Chairman, we had a fight on this legislation just 3 years ago. It was then that the delegation from California rallied sufficient support within the House membership to win the right for our State to maintain stricter standards against auto effluents than prevail in the other 49 States. This change was accepted by the rest of the House, I think on the grounds that California had been suffering from this problem longer, and had taken greater strides toward meeting the problem.

Unfortunately, since that fight in 1967—and even though we did improve legislation then on the books—air pollution has grown still worse.

It is my opinion that the bill we are about to pass today, unless we give serious attention to the amendments which will be offered, will fail to take the additional steps that are necessary now to call a halt to this ever-mounting pollution.

Mr. BELL of California. Mr. Chairman, will the gentleman yield?

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Mr. VAN DEERLIN. I yield to the gentleman.

Mr. BELL of California. Mr. Chairman, I would like to commend the gentleman for his statement and for his forthright stand on this issue.

Is it not true that sometimes to get something done you have to take somewhat drastic action to get the problem solved; and in this particular instance it might be the automobile industry that needs to take drastic action? What is your opinion of this concept?

Mr. VAN DEERLIN. I congratulate the gentleman. Speaking of drastic action, he will recall that the State senate in California last year, by a 26 to 5 rollcall, voted to require the elimination or phasing out of the internal combustion engine in automobiles sold in our State, by the year 1975.

Mr. BELL of California. Does the gentleman think that by just continuing the way we are going it is likely to be enough to solve this problem in Los Angeles and San Diego and other troubled areas?

Mr. VAN DEERLIN. New York and Philadelphia and Chicago.

Mr. BELL of California. Yes; New York and Philadelphia.

Mr. VAN DEERLIN. No.

Mr. BELL of California. Does the gentleman think anything significant is going to be accomplished in pollution abatement if we just continue the way we have been going for the last few years with just a few little changes here and there in the way of improvements?

Mr. VAN DEERLIN. I think the gentleman anticipates my attitude on that.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman.

Mr. STAGGERS. Did I understand the gentleman to say that he wanted all internal combustion engines phased out in California by 1975?

Mr. VAN DEERLIN. I said our State senate felt so deeply the concern of the people of California that the senate voted last year to phase out all internal combustion engines sold in California by the year 1975—but the bill was not enacted into law.

Mr. STAGGERS. Oh, I see.

Mr. FARBSTEIN. Mr. Chairman, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman.

Mr. FARBSTEIN. Under an amendment that I will offer, we want to phase out the internal combustion engine by 1978. Until 1975 the California standards should prevail. But after that, gradually, in 3 years, large motors and smaller motors and so on will be phased out. So by 1978 there shall be a clean engine and no longer a smog-producing engine. I believe the technology of the automobile companies is such that they can produce, or they can mass-produce, an automobile which will be clean and at the same time be able to sell at prices similar to those at which they are sold today.

Mr. VAN DEERLIN. May I say, I feel the gentleman's generosity in extending the limit by 3 years over what the California senate is willing to do will impress itself on all, except possibly the auto industry.

The most dramatic evidence of air pollution is always to be found in dirty smokestacks in factories, belching smoke across populated communities. The fact of the matter is that in urban areas 90 percent of the poisons in our air come right out of the automobile exhaust pipe. While it is easy to get civic campaigns started against those black factory smokestacks, it is a much sadder ex-

perience when you try to do something about what goes into fuel composition or into the manufacture of an automobile.

The CHAIRMAN. The time of the gentleman from California has expired.

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Mr. VAN DEERLIN. Mr. Chairman, is it possible to have an additional minute?

Mr. STAGGERS. I yield the gentleman from California 1 more minute.

Mr. VAN DEERLIN. I would like to make the point that by compelling others to do this job, we can save a great deal of money. This Congress has authorized a billion dollars, and appropriated $600 million for clean water. I think we could get by for much less money when it comes to establishing clean air if, by law, we put the matter up to the automobile and oil industries themselves.

I regret that so many of those who are present are members of the committee who have already listened very patiently to my arguments before today. I should like to point out that on page 51 of the report, you will find a fairly concise statement of our objections, signed by three members of the committee—the gentleman from New York [Mr. OTTINGER], the gentleman from Rhode Island [Mr. TIERNAN], and myself. Thank you.

Mr. STAGGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. MIKVA].

Mr. MIKVA. I thank the Chairman. I should like to add my compliments to those of other speakers to the committee and the subcommittee for what I consider to be an overall excellent job. I think this bill goes a long way toward solving some of the problems that we as a country have in cleaning up our air.

I have the dubious distinction, according to the Federal air pollution authorities, of representing one of the most polluted, if not the most polluted districts in the entire country. While I am aware of the long stride forward that has been made, I think there is one instance where a defect in the 1967 act must be cured if we are going to begin to approach clean air in the urban areas of our country. That has to do with an item that so fundamentally touches on States' rights and local initiative that I for the life of me cannot understand how it crept into the 1967 act. I think this is the time for it to be removed.

I refer of course to the provision that preempts local and State governments from doing anything about automobile emissions, not only in terms of living up to the Federal standards which are strict, but in terms of trying to impose standards that are more strict. I regard as an anomaly the fact that a State or a local government can impose such different standards on fuel. It can impose such different standards on any kind of stationary sources. It can impose such different standards on motorboats. Only the automobile is treated as some kind of privileged character which does not have to meet State or local standards.

For example, United States Steel is in my district. I think it has other plants in the districts of many of the Members on the floor today. They have to meet local and State antipollution and stationary air standards of all localities in which they produce. Automobiles have to meet local laws insofar as size is concerned, insofar as tires are concerned, insofar as equipment is concerned. Only in the special area of air pollution are they given a pass, and while I have great regard for the automobile industry, I think we pay too high a price for

their being able to operate under one single standard.

The late Justice Frankfurter once described the local government as 50 separate laboratories in which we are to find new ways of solving problems, and I think in this area we ought to repeal that preemption of new solutions, and I intend to offer an amendment to that effect.

Mr. STAGGERS. Mr. Chairman, I yield 5 minutes to the gentleman from North Carolina [Mr. PREYER], a member of the committee.

Mr. PREYER of North Carolina. Mr. Chairman, I rise in support of this legislation. In recent months the words "environment" and "ecology" have been trigger words, words that have set off our deepest emotions. We have all been viewing with alarm, but alarm by itself puts out no fires, to mix metaphors. We have all made a lot of noise on the stairs, and now it is time to come into the room. It is time to stop talking and to take concrete action. Action is a whole lot harder than talking, and when we ask ourselves what kind of law should we pass that will do something about air pollution, the popular demonology of pollution is not of much help, nor is jousting at "greedy business" or "mindless technology."

What we have to do is to apply creative intelligence to the problem at hand. One problem is that we know so little about what to do. For example, Barry Commoner, who testified before our subcommittee, said that we are woefully ignorant about the nature of air pollutants and about the chemistry that is going on in this massive air over our cities. He described an instrument he was using at Washington University which provides a total analysis of an air shed for nitrogen dioxide and sulfur dioxide. You put this instrument in the back of a station wagon. You point it at the sky, and as you drive down the road, you can read off on a paper chart the concentrations of nitrogen dioxide and sulfur dioxide. The amazing fact is that this is the only instrument of its kind in the country.

This means that we need a much stronger research effort and that we are limited in what we can do legislatively by our lack of knowledge. Commoner, while testifying on this bill, estimated we probably face a 10-year period of research and operation of pilot plants before we have some final answers. So I think the point we should make here is that our hopes should not be too high for a final answer on this bill.

Our people in this country are already aroused to a high pitch of disbelief, frustration, and despair on many matters, and we do not need any more total solutions that do not work. The present bill is responsible legislation because it does what we know how to do—no more and no less.

It offers no final Apocalyptic solution, but this represents the best we know how to do at this time, and I strongly support it. The bill provides that as our technology develops, as our research gives us more facts, then the Secretary of Health, Education, and Welfare is empowered to upgrade and strengthen air pollution standards in the light of such new knowledge.

What does the bill do? It strengthens the present law in five significant respects—which have been commented on already and which I will not repeat. It provides for tripling of funds for air pollution control. I should like to make two general points which have not been commented on.

One thing I think the bill recognizes is that we cannot return to some pre-technological womb. We cannot return to Walden Pond. What we have to work with in this country,

the only real possibility we can consider, is solving this problem in terms of a growing economy. As Walter Heller pointed out recently, by the year 2000 we will have to have twice as many schools in this country, and, if human nature stays the same way, we will have to have twice as many jails and twice as many everything, so solving the air pollution problem in terms other than in terms of a growing economy is probably impossible.

If we retreated, say, to an 1870 level of technology—and if we went back to 1870, we would have to realize the bison were already dead, the eastern forest had already disappeared, and colonial cities were in a decline—then the median standard of living, if we went back to that time, would be far below the 1970 poverty line. So I think we have to deal with this problem in terms of solving it within the framework of our modern economy and not by "Buddhist economics" (that is, by reducing our gross national product until we are back to the Tibetan village level).

I think it can be done. The mayor of a small midwestern town recently said: "If you want this town to grow, it has got to stink." This fatalism is totally unacceptable.

I would like to make one comment on the substance of the bill itself, and that deals with the national standards and with respect to industry's role in the big cleanup, because industry has got to play a key role. Industry has objected in a number of instances to national standards, but we must have clear guidelines from Government that will apply uniformly to protect each individual industry's competitive position. This means we must have *national standards.*

Some industries object to national standards because of their belief that State regulations can more easily tailor the situation to local industry needs. But if we do not have national standards, we find what has happened is that States begin to bid against each other to attract polluting industries. A State says, "We will be easier on you if you come into our area." Or the industry will say, "If you enforce this standard against us, we will move our industry into another State." So I say it is not fair to those States who are trying to do something about pollution to allow such lowering of standards to attract *polluting industries into other States,* so I think the national standard is an excellent approach.

We are embarking now on a new experiment in government, an experiment

[p. 19213]

to determine whether we are wise enough to direct our affairs in a way which recognizes the essential interdependence of man and his environment.

The situation is not hopeless despite some doomsday prophets, and I think the human race can solve it with the *proper efforts and proper programs.* I think this bill is a fine step in that direction.

Mr. HALL. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Evidently a quorum is not present. The Clerk will call the roll.

The Clerk called the roll,* * *.

* * * * *

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. GALLAGHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 17255, and

finding itself without a quorum, he had directed the roll to be called, when 357 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. MURPHY].

Mr. MURPHY of New York. Mr. Chairman, as a member of the committee, I congratulate the chairman of the full committee and the chairman of the subcommittee and the gentleman from Florida [Mr. ROGERS] on an outstanding legislative accomplishment in presenting this clean air bill to the House.

The city of New York is starting to shut down different city functions because of an atmospheric inversion. At no time in the past and at no time in the future is this legislation more necessary. I urge its speedy enactment.

Mr. Chairman, today the House is considering what may be one of the most significant pieces of legislation of 1970. The Clean Air Act amendments will arm Federal officials with the legal weapons to probe, prosecute, and punish willful air polluters.

Today, there are no less than seven major departments and agencies involved in the air pollution battle in the metropolitan area I represent. Yet, we are losing the fight for life and lung a little more each day. The amendments we will act on today will reverse the trend of this battle. We will put teeth into the fight for clean air.

During consideration of these amendments in the Committee on Interstate and Foreign Commerce, my colleagues agreed with me that a serious obstacle to success in cleaning up our air was the inability of the Federal Government to move decisively in areas of suspected pollution.

For this reason I brought an amendment through the committee which provides dramatic new enforcement powers to the Federal Government. The need for this kind of power was amply demonstrated to me in my own district, where pollution from one State flows into another and neither State can adequately compel changes in the other State.

This language, which is now contained as section 112(f) of this bill, will give the States the necessary backup from the Federal Government to stop interstate pollution.

The bill permits officers or employees duly designated by the Secretary of Health, Education, and Welfare upon presentation of appropriate credentials and a written notice to the owner, to enter, at reasonable times, any establishment which the Secretary has reason to believe is or may be in violation of regulations issued for the control of air pollution. These officers shall be authorized to inspect records, files, papers, processes, controls, and facilities relevant to compliance with the air pollution regulations. A separate notice is required for each inspection, and inspections shall be promptly completed.

As you can see, we are authorizing the Federal Government to step into critical interstate situations—such as exist in the major industrial areas of this country, and elsewhere—where the interstate mechanisms have failed to abate pollution.

This section is one which can be embraced by every State in the Union because it gives the States the added muscle they have lacked in years past.

The language for this section grew out of a conference I held in New York this spring. Every important agency in the metropolitan area involved in the air pollution battle was

represented. Federal, State, city, and interstate officials suggested the language of this section to me as a vital and necessary arming tool to reverse the increasingly dangerous blanket of foul air which threatens the health of every one of us.

I strongly commend this section to the Members of the House.

I also strongly commend the full Clean Air Act Amendments of 1970 to this body. All of these steps we consider today are vitally needed if the Federal effort in the fight for clean air is to be but little more than that of a mere bystander.

Mr. SPRINGER. Mr. Chairman, I yield such time as he may consume to the gentleman from Nebraska [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Chairman, I have long been active in efforts to clean up our air and water and land pollution.

In order that I may make my position clear I herewith refer to a letter from the Associated Press Bureau in Nebraska asking my position on various aspects of the problems of air and water pollution. Their letter to me reads as follows:

THE ASSOCIATED PRESS,
Omaha, Nebr., February 20, 1970.

HON. GLENN CUNNINGHAM,
Rayburn House Office Building,
Washington, D.C.

DEAR REFRESENTATIVE CUNNINGHAM: Some of the biggest news of the day involves the growing public interest in ecology and the problems of air and water pollution.

For our next roundup on Nebraska congressional opinion, we would like to ask some questions dealing with the pollution problem in the United States and specifically in Nebraska:

1. How seriously do you view the threat of air and water pollution in the nation? Do you concur with those who claim the planet may be destroyed in a few short years by pollution? Or do you think the immediate threat has been over-dramatized?

2. How strong a role should the federal government play in the antipollution fight? Should the government have punitive powers to force industry to take antipollution measures? Do you think business and industry have dragged their feet on pollution?

3. How seriously do you view the pollution problem in Nebraska? What should be done about the feedlots that are dumping untreated wastes into Nebraska's rivers and streams? Can we depend on Nebraska's growing industrial community to take steps voluntarily to combat pollution or must they be forced by the government to do so?

Sincerely,

JOHN M. ARMSTRONG,
Correspondent.

P.S.—One further question: Should business and industry pass on the costs of pollution control to the consumer, or should they use some of their profits to pay for pollution abatement?

Mr. Chairman, I replied to the Associated Press inquiry at some length, and I now present my reply to the AP:

February 26, 1970.

MR. JOHN ARMSTRONG,
The Associated Press,
Omaha, Nebr.

DEAR JOHN: I think the topic for your next round up of Nebraska Congressional opinion is an excellent one.

Before answering your questions specifically regarding ecology and the problems of air and water pollution, may I point out that that was one of my major concerns even prior to my becoming Mayor of Omaha in 1948. At that time—that is, prior to my election as Mayor—we had a civic effort called the Omaha Improvement Plan and there were various study groups set up to study various aspects of Omaha's many problems. The purpose of the studies was to determine what, it anything, should be done, and if some action was to be taken, what amount of money should be recommended to be placed in a package in the form of a bond issue to provide the means of solving these problems, or at least to make a start at solving them if they required a long range program.

I was appointed by the chairman of the overall committee, who was the President of Northwestern Bell Telephone Company, to be the chairman of the Omaha Improvement Association's Committee on Sanitation. There were other members of my committee, probably five or six, but I do not recall ex-

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actly. We made a detailed study of Omaha's long-neglected sewer problems and the dumping of untreated sewage into the Missouri River, as well as other ecological problems, includ-

ing air pollution. Of the some twelve or more study groups, our committee recommended, as I recall it, approximately $3½ million in the form of bond issue money to accomplish the most urgent needs. The total package of these bonds recommended by the various study groups amounted to a considerable sum and that is why we were cautioned to hold our recommendations to a reasonable amount in order that the voters would not be too frightened by the whole package of recommendations.

The voters did approve the majority of the bond issues that were on the ballot, including the money for the fixing of our sewers and the problem of dumping of raw sewage into the Missouri River, for air pollution and related subjects. This was the first start that Omaha had made in all of its history to stop the pollution of the Missouri River due to the raw sewage being thrown into it at various locations, from the airport to a considerable distance south of the old Ak-Sar Ben Bridge. We also built a tremendous number of sewers that were broken, creating a seepage problem, and during heavy rains our old combined sanitary and storm sewers were flooding the streets. The combined sewers naturally contained a considerable amount of raw sewage. We also recommended a strong anti-smoke ordinance, as it was called in those days, although this required no bond money but was a part of cleaning up our environment.

Subsequently the advisory committee which I mentioned above were made permanent and a part of the city government when the bonds were approved. I was then named Secretary of the Omaha Sanitation Commission, which was then charged with carrying out the recommendations we had originally made and the expenditure of the funds that had been approved by the voters.

I took a special interest also, as noted above, in smoke abatement because it was a major problem in Omaha at that time. So I made a detailed study of this and looked particularly at St. Louis, which at that time had done a tremendous job in cleaning up its air pollutants. I have forgotten the name of the man in St. Louis who achieved these successful results, but because of what he did he was eventually elected Mayor of that city. In any event, I finally personally prepared a comprehensive smoke-abatement and/or control ordinance which I presented to the City Council with strong arguments for its adoption, and it was adopted.

Shortly thereafter I was elected Mayor of Omaha and it fell upon me to implement and administer the smoke-abatement ordinance which I had presented and which had been adopted prior to my election as Mayor. The first thing I did was to employ a professional person, a graduate chemical engineer, to administer the program. His name was Herb Ulrich and I vividly recall how very effective he was in carrying out the ordinance. It used to be that dozens upon dozens of smoke stacks belched out black soot and smoke every morning for hours on end and other times during the day. Mr. Ulrich told me that no smokestack should emit any smoke, soot, etc., because if it did it simply meant that the heating unit supplying that smokestack was either faulty or improperly operated.

In further carrying out the ordinance, we stationed spotters every morning beginning at dawn on three of the tallest buildings in Omaha so that we could have a view of where this smoke was coming from. I recall going with Mr. Ulrich atop the Telephone Building, which was one of our lookout posts. In any event, when Mr. Ulrich and his staff saw this smoke being emitted they would spot the location and go there immediately and talk to the people and explain to them that the heating unit was either faulty or being operated improperly. And we were severe with industry in these cases. As a result, over a period of three or four years we had eliminated 90 plus percent of all of these black, sooty, smoky emissions from chimneys and smokestacks. As a matter of fact, our program was so successful that we received national recognition for what we had done.

So I am no Johnny-come-lately in this field and I am sorry that Omaha again has a problem because what happened after I left the Mayor's officer was that they combined Mr. Ulrich's department with two or three other departments and relegated him to a minor position. This handicapped Mr. Ulrich and his staff in carrying out their duties, and what might have happened behind the scenes or behind closed doors with top city officials is unknown to me. But the program was gradually phased out. So all of our good work really went for naught and even today when I see these emissions from smokestacks I say to myself, "Somebody ought to see these people and stop this because it can be stopped if the heating unit is efficient and properly operated."

Now to your questions.

1. I view with great seriousness the threat of air and water pollution in the nation and I do concur with those who claim the planet may be destroyed in a few years by these pollutants. I do not think by any means that this threat has been over-dramatized. (I might add that because I was so deeply involved with clean air way back in 1946, 1947, 1948, and until 1954, when I was Mayor, that I even hesitated to walk the streets because of the additional dangerous condition of the environment due to exhaust fumes from automobiles.)

2. I think that the Federal Government

must play a strong role in this pollution fight and I wholeheartedly support President Nixon's program. As a matter of fact, I am a co-sponsor of all seven of the President's bills in this area.

I do not always approve of the Federal Government having punitive powers, but in this field the government has no other recourse but to have punitive powers to force industry to undertake anti-pollution measures. In this field it does no good for one city or one state to have an outstanding program if an adjacent state does not have the same type of program. For example, the Missouri River does not affect just Nebraska. It is not enough for Omaha to stop polluting it. Other jurisdictions must do likewise. This is also true of air pollutants. They have no respect for state boundary lines. Therefore, it is a Federal problem and must be dealt with as such.

I do believe that business and industry have not met their responsibilities regarding pollution, but I believe they are beginning to recognize the problem and will be cooperative. It is just a very sad thing that our atmosphere today is so contaminated because of the many years of neglect of this problem by those who have caused it.

3. I think Nebraska has a serious pollution problem and much needs to be done, but I do feel that overall it is the larger, more industrial states who bear the greatest responsibility. I do not mean for one moment that Nebraska does not have a problem and should not do all it can to abate pollutants. I would mention feed lots, for example, that are dumping waste into Nebraska's rivers and streams. I would say that this must not be allowed to continue. It matters not who pollutes the streams. The big problem is to stop pollution from whatever source.

I do not know whether or not we can depend upon Nebraska's growing industrial community to take steps voluntarily to abate pollution, but I do know that if it is not stopped the Federal Government will step in and require some action.

I believe those who are causing the pollution actually should bear the costs of controlling pollution of our air and water and other phases of the environmental problem. Business and industry, in my opinion, should not pass on the costs of pollution control to the consumer but should use their own funds for this purpose. The public at large should not be penalized for something over which they have no control. Mr. Nixon's program in this field is extraordinary. Yes, we have problems, but I know of no problem that is any greater than this one which we are discussing in this letter.

I might add as an aside that one of the reasons I have opposed the Platte River Dam from Ashland north is that it is my belief, after studying engineering data, that this dam would result in a highly polluted mud hole, just as the Potomac River which runs right through the City of Washington is one of the most polluted rivers in the United States. So my hat is off to Mr. Nixon for the fight he is going to wage, and I hope that the majority party, which controls the Congress, will cooperate with those of us in the minority and see that this legislation which he has recommended and which I have cosponsored is speedily enacted into law.

In reference to the Potomac River, I might add that it is so full of chemicals that to me the water is unfit to drink even after its so-called treatment. As a result I purchase for use in our home bottled water, pure unadulterated spring water, which comes from upper New York State. This is expensive to me but for the good of my health and that of my family I have found it necessary to assume this expense.

You have chosen a good topic and I wish you well. There is much more that I could say, but I think I have said as much as you would care to hear from me at this time.

Sincerely yours,

GLENN CUNNINGHAM,
Member of Congress.

Mr. Chairman, in conclusion I wish to outline a position paper on ecology which involves the problems of air, water, and land pollution. My position paper reads as follows:

ECOLOGY—PROBLEMS OF AIR, WATER, LAND POLLUTION

(A position paper by Congressman GLENN CUNNINGHAM)

My interest in and concern for our environment began many, many years ago, prior to my election as Mayor of Omaha in 1948. As chairman of the Committee on Sanitation of the Omaha Improvement Association, a civic organization, I became deeply involved in the city's long-neglected sewer problems, the dumping of untreated sewage into the Missouri River, air pollution, and other ecological problems. As a result of the studies and recommendations of the Omaha Improvement Association, bond issues were approved by the voters and funds became available for sewer repair and construction, sewage treatment, smoke abatement, etc. The study committees were made permanent as part of the City Government and became known, as the Omaha Improvement Commission. I was named Secretary of the Omaha Sanitation Commission. In this

position, and subsequently as Mayor, it fell upon me to implement the programs and regulations the voters approved to carry out the Omaha Improvement Commission responsibilities.

One of the most serious environmental problems existing in the city at that time was the black soot and smoke that belched out of several dozens of smokestacks. I made a detailed study of this problem and prepared a comprehensive smoke-abatement and control ordinance which was presented to the City Council and adopted. Soon thereafter I was elected Mayor of Omaha and one of my duties was the implementa-

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tion and administration of this smoke-abatement ordinance. We worked closely with industrial firms, providing information and instructions on operation and renovation of their heating units, resulting in great efficiency and economy in their operations and achievement of our goal—reduction of air pollution. Eventually 99 plus percent of all the black, sooty, smoke emissions from chimneys and smokestacks was eliminated. As a matter of fact, this program was so successful that it received national recognition.

I view with great seriousness the threat of air and water pollution in the nation today. These environmental problems have no respect for boundary lines and therefore I think the Federal Government must play a strong role in combatting pollution and efforts to make our environment more livable and enjoyable not only for ourselves but for future generations.

The first Federal air pollution program was authorized in 1955, just prior to my election to the Congress. In the years I have served in the Congress I have consistently supported anti-pollution legislation. In 1963 we enacted the Clean Air Act. Much progress in the cleaning up of our air and water has resulted from this and subsequent legislation. Because of my efforts for passage of the Air Quality Act of 1967, President Johnson invited me to the White House when he signed the bill into law and presented to me one of the pens he used.

I wholeheartedly support President Nixon's program for control of air, water, and land pollution, and I have co-sponsored seven bills which constitute his legislative program in this area. These bills are designed to wage a constructive and effective campaign against air and water pollution by encouraging better soil conservation, the development of parklands and public recreation areas, as well as dealing with means of disposing of trash and all "solid wastes." This legislation is also designed to clean up our water resources, to improve the quality of the air we breathe and to remove from the landscape the litter and trash which have become a national eyesore.

The President's plan involves fundamentally new philosophies of air, land, and water use, stricter regulations, increased government action, expanded citizen involvement and new programs to make sure that government, industry, and individuals all are called upon to do their share of the job and to pay their share of the cost.

Each of the seven bills uses a different approach, but together they form a comprehensive anti-pollution program. Highlights of each of the bills I have introduced follow:

H.R. 16031: Amends the Land and Water Conservation Fund Act of 1965. Provides for the acquisition of lands for use as National parks and Federal recreational areas. Also allows the Government to dispose of lands for which it has no use, the receipts from which would be used to obtain other more useful lands.

H.R. 16032: Authorizes the Council on Environmental Quality to conduct studies and make recommendations respecting the reclamation and recycling of material from solid wastes; extends the provisions of the Solid Waste Disposal Act, the principal concern of which is the junked car. The object of this bill is to clean up the face of America. Included would be the development of disposable containers to help unclutter the American landscape.

H.R. 16033: Amends and extends the Clean Air Act, provides for national standards of ambient air quality, expedites enforcement of air pollution control standards, regulates fuels and fuel additives, provides for improved controls over motor vehicle emissions. This legislation is concerned both with control of noxious discharges from internal combustion engines and with air pollution resulting from industrial discharges.

H.R. 16034: Establishes an Environmental Financing Authority to assist local and state governments in the financing of waste treatment facilities.

H.R. 16035: Provides a 5-year program with the Federal and the State or municipal governments contributing toward the construction of waste treatment facilities on a matching basis. The Federal Government would contribute 40 percent of the cost and the State or municipal government would contribute 60 percent.

H.R. 16036: Amends the Federal Water Pollution Control Act to establish standards for pure water; implements swift and effective enforcement of water pollution control measure. Gives the Secretary of Interior authority to achieve such enforcement fairly and equally throughout all of the states.

H.R. 16037: Principally concerned with developing and supporting improved state and interstate water pollution control programs, with chief emphasis on research, investigations, training and demonstration activities conducted by the Department of Interior. Also upgrades water pollution control programs carried out by individual institutions and agencies assisted by Federal funds.

Mr. Chairman, I believe the above very well outlines my long interest in these problems and that I am no Johnny-come-lately in doing something about cleaning up our air, rivers, and land which problems, in my estimation, and perhaps the most important problems facing this generation today and for future generations whose very existence depends on what we do not to protect them.

Mr. SPRINGER. Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts [Mr. KEITH].

Mr. KEITH. Mr. Chairman, I rise in support of the legislation.

Mr. Chairman, if you were a nonsmoker and spent a day breathing the air in the city of New York, you would have experienced the same ill-effects of smoking two packs of cigarettes. The air in New York is polluted. The air in Washington is polluted. In fact, the air in many of our major cities is polluted.

The bill before us today is designed to quicken the pace of the battle against the destruction of our atmosphere. I am not an alarmist in saying that time is running out. In fact, some experts in the field feel it may be already too late.

The Air Quality Act of 1967 laid the foundation for the battle, but did not go far enough. We have experienced a hodge-podge of activity in the antiair pollution effort with far too many rules, regulations, and procedures arising from the several jurisdictions involved.

The last 3 years have produced evidence that clearly shows some national minimum standard dealing with the emission of air pollutants must be established. This bill will do just that. It puts standards into effect throughout the Nation without having to wait for individual State action.

Further in the area of interstate pollution problems, it provides a clear means for Federal enforcement of these newly established standards. Such authority is essential in a Nation that is growing closer and closer together through advances in the transportation and the product marketing fields.

The enforcement provisions have also been strengthened so that an obviously guilty polluter cannot rely on administrative delays to put off eventual installation of control devices.

This measure further deals with the very serious problem of stationary air polluting facilities. Under this bill, the Secretary of Health, Education, and Welfare would have increased ability to control and stop such hazardous offenders.

More than 60 percent of our national air pollution problem is caused by automobiles. This is particularly acute in areas of high population density which receives a concentrated dosage of carbon monoxide and carbon dioxide emissions from automobiles.

One health association advises pedestrians to minimize their breathing while walking along city streets. In fact, they recommend the rush hour ambiant to stop breathing entirely while outside an air-conditioned environment.

It is possible, if we do not act, that one day the Public Health Service will recommend an end to unprotected breathing regardless of an in-

dividual's location, unless strong measures are taken now.

The need then for stronger air pollution control measures is great. This bill before us now, Mr. Chairman, provides increased control and stronger penalties. It better organizes the attack on the polluters from the national point of view.

Air is the basic substance of life. The elements of the air comprise the greater portion of our body composition. Without clean air to breathe all else is inconsequential.

And so, Mr. Chairman, I strongly urge my colleagues on both sides of the aisle to consider the merits of this bill and vote for its final passage.

Mr. SPRINGER. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. HALPERN].

Mr. HALPERN, Mr. Chairman, I rise in enthusiastic support of this legislation.

Mr. SPRINGER. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. BELL].

Mr. BELL of California. Mr. Chairman, I rise in support of this legislation.

Mr. SPRINGER. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky [Mr. CARTER].

Mr. CARTER. Mr. Chairman, air pollution, as most of us know, causes many diseases, bronchitis, emphysema, and even lung cancer.

The known causative agents are hydrocarbons, carbon monoxides, nitrous oxides, and particulates.

Many instances of widespread serious illnesses have followed protracted periods of extreme pollution. Increases in death rates have been noted in London, New York City, Los Angeles, and Donora, Pa.

In many areas of our country, we still see smokestacks belching forth clouds of poisonous pollutants. A still greater menace occurs from the many automobiles, 80 million, in our country. They

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account for approximately 50 to 55 percent of the pollution.

The present bill permits the Secretary of Health, Education, and Welfare to set standards of air quality throughout the country and emission standards for all new smoke-emitting factories. In case a pollution problem occurs, the Secretary is empowered to come into the State or region and institute immediate abatement procedures. In case of autos, new standards have been set for emissions, and the automobile industry has been quite cooperative. The problem of leaded gasoline has been mentioned. The chief complaint concerning this substance is that it clogs the devices used to clean the emissions, and not because lead is itself a dangerous pollutant.

All in all, it is my feeling that this is a good bill and should be passed.

Mr. STAGGERS. Mr. Chairman, I yield 3 minutes to the gentleman from Rhode Island [Mr. TIERNAN], a member of the committee.

Mr. TIERNAN. Mr. Chairman, I thank the gentleman for yielding.

The report on H.R. 17255 by the House Interstate and Foreign Commerce Committee, of which I am a member, states from the outset that—

The strategies which we have pursued in the war against air pollution have been inadequate in several important respects and the methods employed in implementing those strategies often have been slow and less effective than they might have been.

H.R. 17255 is an attempt to speed up, expand, and intensify the war against air pollution and for that reason, I support its general thrust. The

problem is that the bill does not go far enough.

It has been shown that the automobile is responsible for 60 percent of all air pollution in the United States. Yet this bill fails to deal effectively with eliminating pollutants from this engine. Members of a bipartisan group, including myself, Congressmen LEONARD FARBSTEIN, DANIEL BUTTON, LIONEL VAN DEERLIN, and RICHARD OTTINGER have prepared amendments designed to strengthen H.R. 17255 so as to make certain that automobile pollutants are eliminated as a major source of environmental decay by the mid-1970's.

My amendment deals with the regulation of fuel composition. The amendment substitutes a far superior version recommended by the administration, in place of the fuel composition section in the committee bill. The amendment would provide the National Air Pollution Control Administration with the power to regulate the composition of fuels, thus giving it the ability to ban lead as well as other additives in gasoline, in order to reduce pollution. It is my feeling that the NAPCA needs this power if we truly hope to have clean air in the near future.

In a comparison between H.R. 17255 and my amendment, I think it is clear that the latter is more effective in the fight for clean air. First, the administration bill covers all fuels. H.R. 17255 applies only to auto fuels. Second, both provide for regulation of fuel composition to eliminate adverse effects on public health and welfare. The committee bill, however, requires that no regulation may be established if the health danger can be remedied through increased auto emission standards. The burden is thus put on the auto industry, and the oil industry is left pretty much free and clear. Third, the committee bill requires specific "finds derived from relevant medical and scientific evidence" to prove that a fuel or fuel additive endangers public health or welfare. The administration bill requires no such rigorous proof.

NAPCA has indicated it could probably not scientifically justify banning lead in gasoline under this procedure. Fourth, the administration bill provides authority for NAPCA to secure from industry fuel additive pollution research it reasonably needs to assess pollution characteristics of fuels. The Food and Drug Administration has such power. The committee bill provides only the power to secure research already done. NAPCA would thus be required to do much of its own research at a substantial additional cost. Tied to rigorous evidence requirement, it would be almost impossible for NAPCA to operate under this procedure.

Clean air is vital to our health and happiness. H.R. 17255 can be an effective tool toward cleaning our air, especially if we accept the amendments which are being offered to strengthen the bill. The problems of environmental pollution, unless dealt with quickly and effectively, will plague mankind forever. The steps contained in H.R. 17255 are but the bare minimum. I urge my colleagues to support this vital legislation with the amendments.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from West Virginia [Mr. HECHLER].

Mr. HECHLER of West Virginia. Mr. Chairman, I believe the Nation is indebted to the Congress in its demand for strict air pollution control.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. VANIK].

Mr. VANIK. Mr. Chairman, I rise

in support of this bill, but I am also in support of amendments which I believe are important to make the bill more effective.

Like many Members of this House, I was shocked to learn late last evening that the regularly scheduled legislation for today, the postal reform bill, had been removed from consideration and that H.R. 17255, the Clean Air Act Amendments of 1970 had been substituted. This air pollution control legislation is an extremely vital bill for the health and future of our country, and yet it has been brought up for consideration today on less than 24 hours' notice. The hearings of the committee which handled the bill were not available for distribution until midmorning today—2 hours or so before debate on the bill was to begin. These hearings come in two volumes and total 891 pages. Mr. Chairman, I wanted to look through these hearings and study them, but the sudden scheduling of this bill has denied me that opportunity and right.

Mr. Chairman, there are terrible weaknesses in this bill, particularly as it relates to automotive air pollution control.

The present internal combustion automobile engine is the most serious and dangerous source of air pollution in the Nation today. The U.S. Public Health Service estimates that the auto causes 60 percent—or more—of all air pollution in America today. Automobile exhausts create 180 billion pounds of poisonous pollutants a year. Medical research teams have found that heart diseases, lung cancer, respiratory ailments, and eye infections increase in proportion to the increase of automobiles. In addition to causing disease and death, air pollution cuts crop production, destroys trees, and is estimated to cost the economy $30 billion annually. The type of damage that can be done is well illustrated by the U.S. Forest Service estimate that 1.3 million trees in the San Bernardino National Forest will die in the next 5 years because of smog on the freeways.

These facts, plus the fact that the 100 million autos on the highways today will increase to 150 million by 1980, demand the strongest possible action.

The action taken by the committee bill will alleviate auto pollution for a little while; but as the number of cars on the highways grows the level of pollution will begin to rise again. It will grow and grow until in the near future auto exhaust pollution will be even worse than it is today.

It is for this reason that I am supporting four strengthening amendments to the bill before us today.

First, in the area of auto emission standards, I will support the amendment to adopt the present California standards as nationwide minimums. Under the present air pollution control laws, California was permitted to set tougher standards than the national criteria, if it could be shown that these standards were feasible. These California standards have been set and are feasible and economical. As a result the people of California will have a reduction of auto emissions and pollutants from new cars; the people of my congressional district will not. The people of New York City, of Pittsburgh, Chicago, and Philadelphia will not—and yet all of these cities have severe air pollution problems. The health of all these people is being threatened. They have been "zoned" for a lower quality of air; they have been "zoned" for a higher level of disease, sickness, and discomfort.

The bill before us does not adopt the California standards. As a result the National Air Pollution Control

Administration plans no national reduction in hydrocarbon or carbon monoxide standards until 1975.

Therefore, I am supporting the amendment to adopt the California standards as nationwide minimums. This will not prevent the Air Pollution Control Administration from setting tougher standards. It will require that Detroit's current know-how in auto emission control will be available to all Americans—not just Californians.

Second, I will support the amendment to provide for better emission control devices. Presently, when autos come off the assembly line, the emission control device is quality tested. If the car passes

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the emission test, it is moved on to the showroom and on to the consumer. Yet it now appears that the ability of these emission control devices to control pollution deteriorates rapidly as the car is used. One Federal study has shown that 57 percent of the emission-control devices installed on the auto fleet of a major car rental firm failed to live up to their billing as smog deterrents after being used only 11,000 miles. The committee bill before us does not provide for testing cars on the road under real road conditions. Therefore, I am supporting the amendment to permit voluntary tests of cars after 4,000 miles of road usage. If the resulting tests indicate a failure of the emission control device, the manufacturer would be required to bring the device back up to standard through production line improvements and recalls.

Third, the present bill, H.R. 17255, does not deal adequately with the problem of fuel composition. Lead-free gas will be required by 1975 to meet emission standards. But this bill places nearly impossible conditions on the National Air Pollution Control Administration's ability to control fuel composition. First, instead of applying to all fuels, the bill deals only with auto fuels. Second, it puts the burden of proving that the fuel exhaust is creating a public health menace on the public agency, but gives the agency no authority to require oil company research to prove the health or safety of the fuel and its additives.

Therefore, I plan to support an amendment which will permit the Department of Health, Education, and Welfare to regulate fuels that would be dangerous in present, high emission autos. It would also require the industry to provide the necessary research to determine the absence or presence of health dangers in fuel mixtures and additives.

Fourth, and most importantly, I will support the amendment to phase out the internal combustion engine from use in automobiles. This amendment is the most vital. It is only through this amendment that we really begin to solve the pollution problem. This amendment will involve major changes. But the seriousness of the pollution crises demands changes. Earth Day speeches are not enough. Action is demanded.

This amendment is needed for two reasons. First, emission controls can only remove a certain percentage, a certain amount of the emission pollution and poison produced by the internal combustion engine. Second, as the number of motor vehicles increase, the total staggering level of automobile air pollution will rise—even though the pollution per vehicle will be less. In a few years, our cities will be even more choked with exhaust fumes than they are today.

The solution is to move to a new power source. We must plan now to move beyond the present technology.

The bill before us makes no pro-

vision for better pollution standards after 1975. Emission standards would be geared to the internal combustion engine instead of the machine being geared to mankind's survival under this bill. If the standard car motor cannot be substantially improved after 1975—and it does not appear that it can be—the car industry would be permitted to continue to mass produce life-killing internal combustion engines. The amendment would warn Detroit that not just the cleanest gasoline engine must be developed, but the cleanest possible energy source—whether it be electric, steam or gas turbine. If the internal combustion engine could not meet the standards set by a feasible and clean propulsion system, production of the polluting engine would be gradually phased out. In 1975 engines of more than 375 horsepower—and comprising less than 5 percent of all new car sales today—would be no longer produced. Engines of over 275 horsepower would be phased out in 1976; those over 175 horsepower in 1977, and all internal combustion engines in 1978.

There is agreement by experts in the field of propulsion systems that pollution-free units can be mass produced almost immediately, that such engines can be cheaper to operate than existing internal combustion engines and will provide the public with all the performance qualities he has come to demand from his modern automobiles—without the creation of poisonous wastes.

The elimination of the internal combustion engine will be a major conversion, but jobs will not be eliminated; industries need not be dislocated.

It is a task we must undertake. The future of our Nation and the health of our people are critically involved.

There are other sections of this legislation which I do support and applaud, Mr. Chairman.

The move to establish national ambient air quality standards is long overdue. To date, the States have been left to establish their own air quality standards. In all too many areas, there has been delay and foot dragging—and ridiculously low standards set to accommodate local industries and interests. The establishment of national standards will insure action throughout the Nation on a rapid basis. A State would be left free, of course, to get stronger standards if it so wished. Further, if a State fails to enforce its plan, the Secretary of Health, Education, and Welfare can notify the State and persons who violate the plan. If, after such notice, the State fails to act within 30 days, the Secretary of Health, Education, and Welfare may request the Attorney General of the United States to bring suit to secure abatement and cessation of the pollution. A court may then assess a fine of up to $10,000 per day for each day during which the polluter fails to take corrective action.

I am particularly pleased, Mr. Chairman, that this bill moves toward a concept which I have long advocated: the establishment of industry-by-industry pollution standards. Under this bill, the Secretary of Health, Education, and Welfare can establish emission standards with regard to any class of new stationary sources which, because of the nature or amount of emissions, may contribute substantially to endangerment of the public health or welfare. It is my hope that he will establish standards on an industry-by-industry basis, taking advantage of the latest technology.

A steel mill, operating anywhere in Ohio, or the Nation, should be required to make the same kind of effort to control the pollution emission of an oxygen steel furnace. A steel

mill creates pollution in certain ways wherever it is located. The procedures to control this form of pollution are likely to be substantially alike. If we would insist on uniform approaches for pollution control of this industry—wherever the plants are located—the competitive benefits of a dirty plant would be eliminated. A steel plant in Youngstown, Massilon, or Middletown would have to make the same effort to control pollution as a plant in Cleveland. There would be no profit in pollution. There would be no production cost advantage to the dirty producer. When the profit is eliminated in pollution by uniform high standards in air quality and pollution control, the battle will be won.

Under the same principle, HEW could establish uniform pollution control standards for the chemical, oil refining, foundries, food processing, and cement-making industry, and other industries. In each case the pollution control regulation would be directed to the specific pollution of a specific industry. Every plant within the same group could be required to maintain the same high standards. There would be no variation in pollution control procedure by a given industry by region or area of operation. The standards for each type of plant would be the same in Zanesville as they are in Dayton or Cleveland. No other part of the State or Nation could lure our industry on the basis of a greater tolerance for pollution.

I feel that Federal standards for pollution control on an industry-by-industry basis are necessary and inevitable. National standards of pollution control would prevent another State from attracting any industries because of a greater pollution tolerance. Such competition is unfair and against the public interest.

Mr. STAGGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. CASEY].

Mr. CASEY. Mr. Chairman, the people of Houston and Harris County, Tex., know the seriousness of air pollution. We have lived with it for many years—and in spite of determined efforts by our local governments to control it—we know it cannot be done without Federal help.

Some 15 years ago, when I had the privilege of serving as county judge, the administrative head of Harris County, I was instrumental in having our commissioners court, on its own initiative, create the first air pollution control program in the State of Texas. We had no State or Federal laws to guide us. We worked closely with our major industries to seek their voluntary cooperation to curb pollution. Some did. Others did not, and we brought suit against nearly a hundred major industries and obtained agreed judgments against most of them. I know what local governments can do to curb pollution—if the locally elected leaders have the courage and determina-

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tion to take action. I also know they cannot do it all alone, and need the vast resources of the Federal Government to assist them.

Some of us were deeply disappointed when the first Clean Air Act was brought before this House on July 24, 1963. Like the first Water Pollution Control Act of 1961, we found that few, if any, of its provisions were of help in combatting our own local problems. Many followed my example, and voted against these two measures as a matter of protest in the hope they would be sent back to committee and substantially strengthened. Subsequently, as my colleagues know, our objections were

heard and these acts broadened and the hand of cooperation was extended from the Federal level to our States and localities. And I have supported these programs since that time.

I learned another fact at the local level of fighting air and water pollution, and that is this: industry needs help in paying the massive cost of installing the devices necessary to curb the emission of pollutants. In Harris County, many of the air scrubbers and other devices needed cost as much as $1½ million and that was in the mid-1950's. When I entered Congress, one of the first major bills I introduced was to give industry the necessary tax incentive to install anti-pollution devices by permitting rapid amortization of the cost. For years, I pushed the administrations of both parties to endorse such a proposal. It was with great personal satisfaction that I saw these provisions finally enacted into law in the Tax Revision Act signed by the President on December 30, 1969.

Industry now has the incentive, and you can see the effect in nearly every major publication as company after company announces how much it plans to spend to curb pollution. I take modest pride in stating that this one provision enacted into law by this House will do more to curb pollution than all we have done so far in this field, for we have voluntarily enlisted the great resources and technology available to industry to aid us in this fight.

In Houston and Harris County, as I know in other parts of our country, the people are deeply disturbed over the defilement of our air and water resources. Many new groups are being formed to join in the fight for a clean environment, and those of us who have long been concerned welcome with enthusiasm their great assistance. My hope is that their enthusiasm never wanes, for it is going to be a long fight to reverse the decades of negligence and it cannot be done without the cooperation of our people, our industries, and our government at all levels.

Today, as the House begins its consideration of the Clean Air Act Amendments of 1970, which I intend to support, I express my thanks on behalf of our people to the distinguished chiarman and members of the committee for their work on this bill. The funds authorized under this legislation are urgently needed, if, as the committee report stated, we are to assure "that the air we breathe throughout the Nation is wholesome once again."

Mr. STAGGERS. Mr. Chairman, might I inquire how much time is left on this side?

The CHAIRMAN. The gentleman has 2 minutes remaining.

Mr. STAGGERS. Mr. Chairman, I yield 1 of those minutes to the gentleman from New York [Mr. FARBSTEIN].

Mr. FARBSTEIN. Well, Mr. Chairman, I suppose all I can say in passing is we got as much notice of the fact that the bill was going to be on for today as the time I am getting now. However, four amendments will be offered.

And I will offer one of the amendments. Three other gentlemen will offer the other amendments, we will try to do something to tighten the bill, to make it effective, so that it will benefit the people instead of benefiting the automobile companies and the oil companies.

Mr. Chairman, according to the Public Health Service, the auto is responsible for 60 percent of all air pollution—180 billion pounds—in this Nation. Pollution from the auto is a serious health hazard in every city in this country with a population of

50,000 or more. This air pollution is the cause of disease and death, cuts crop yields and kills forests, and costs the economy $30 billion annually. Automotive air pollution thus stands as the logical target of those who want to improve the quality of the environment. If the Federal Government is willing to undertake the commitment, the auto can be eliminated as a major source of air pollution by the mid-1970's and a radical reduction achieved almost immediately.

The air pollution bill we have before us, H.R. 17255, fails to achieve this objective. Indeed, it appears to bend over backward to accommodate the auto and oil industries. It is far more limited than the recommendations of the administration.

Indeed, with respect to some provisions of the bill the public interest might better be served if there were no bill at all. If we are going to eliminate the auto as a source of air pollution, it is going to require more than Earth Day speeches.

The following four amendments are being offered to the bill in an attempt to bring this legislation up to the level of the administration recommendations and give the House an opportunity to assert its commitment to save the environment by going beyond the administration position.

1. VOLUNTARY FEDERAL INSPECTION OF DEVICES IN OPERATION

Congressman VAN DEERLIN will offer an amendment authorizing voluntary inspection of auto control devices in operation for over 4,000 miles. If a defect pattern is uncovered, the company would be required to correct it at its own expense, and certification of the device would be revoked until the design defect was also corrected.

Auto engineers say it is almost impossible to judge if a device works until after the vehicle is broken in after approximately 4,000 miles. While assembly line inspection can test individual devices for quality control, no opportunity exists to see if the device actually works in operation. Regulations require devices to work up to 50,000 miles. Current tests simulating operating conditions, however, are unrealistic.

NAPCA tests of rental cars operated at various mileage intervals found that after a few thousand miles up to 80 percent of vehicles tested failed at least one emission test. A study conducted by the California Air Resources Board corroborates this study. This amendment provides an implied warranty to insure the device is manufactured to meet the mileage requirement.

2. ADOPTION OF THE EQUIVALENT OF THE CALIFORNIA STANDARDS

Congressman BUTTON will offer an amendment to establish as national automotive emission standards for 1971, 1972, and 1974 standards equivalent to those already adopted by California. These would be minimum standards, and would in no way preclude the Secretary of the Department of Health, Education, and Welfare from setting higher standards or standards for other years.

Current administration pronouncements call for no change in auto pollution standards for existing regulated pollutants from the 1970 standards until 1975.

In the meantime, we are to be left with the current standards and an ever-increasing number of cars. Under current law, California can set higher emission standards for autos in its jurisdiction, if they are approved as technologically feasible by HEW.

California has set standards far

more rigorous than 1970 Federal standards. These have been approved by HEW and will be required of the 10 percent of the auto market which is produced for California. We see no reason these standards should not also apply to the other 90 percent of the market. It is not a question of technological capability or economics, only whether citizens of New York or Miami may have the same opportunity for cleaner air as those in Los Angeles. What makes it even more imperative that such standards apply nationwide is the general unavailability of California devices outside the State—even if the individual is willing to wait and pay more to get them.

3. AUTOMOTIVE EMISSION STANDARDS BEGINNING WITH THE 1975 MODEL SHOULD BE BASED ON THE CLEANEST FEASIBLE PROPULSION SYSTEM

I will offer an amendment to set auto emission standards beginning in 1975 on the basis of the cleanest feasible propulsion system. Large horsepower internal combustion engines which cannot meet the standards would be phased out first based on the folowing timetable:

Based on sales of 1969 American cars, the phasing out would have the following effect:

Three hundred and seventy-five horsepower in 1975—less than 5 percent of new car sales.

Two hundred and seventy-five horsepower in 1976—35 percent of new car sales.

One hundred and seventy-five horsepower in 1977—all but 10 percent of new car sales.

All internal combustion engines in 1978.

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Current auto emission standards are based on what the inherently polluting internal combustion engine can achieve. There is general recognition that the internal combustion engine cannot be cleaned up much beyond the standard proposed by the administration for 1975 models. This amendment sets standards based on what the best available technology with whatever engine system can achieve these standards. Its object is clean air.

There is also general agreement outside of Detroit that pollution-free propulsion systems can be mass produced almost immediately. Such engines are cheaper to manufacture and operate than existing internal combustion engines and provide the consumer with all the qualities he has come to expect in an automobile.

Phasing out large horsepower engines first has the advantage of eliminating the highest pollutant first. Large engines burn more fuel and thus produce higher levels of pollution. It also has the following additional advantages:

It is easier to develop a new propulsion system in large engines.

Fewer people buy automobiles with large engines for personal use, therefore, any recalls that might be necessary to perfect the system would affect fewer people. The industry follows a practice now of putting experimental systems, which may need recalling to perfect them, on "odd-ball lines" that attract fewer customers and inconveniences fewer customers. This would follow that practice.

4. REGULATION OF FUEL COMPOSITION AND THE ELIMINATION OF LEAD

Congressman TIERNAN will offer an amendment that would substitute for the committee fuel composition section, the far superior version recommended by the administration.

Under California law, the State Air Resources Board is empowered to regulate the composition of fuels with the aim of reducing pollution. The exercise of this power has brought a significant reduction in pollution.

A major element in the administration's air pollution program is to provide the National Air Pollution Control Administration—NAPCA—with a similar nationwide authority, which could be used to regulate or ban lead as well as other additives in gasoline. Going beyond regulation of lead is important as there are other harmful additives, especially among potential substitutes for lead.

The committee bill leaves the shell of the administration fuel regulation power, but effectively "guts" any action under it. This is demonstrated by reference to at least four of its provisions. First, the administration bill covers all fuels. H.R. 17255 applies only to auto fuels. Second, both provide for regulation of fuel composition to eliminate adverse effects on public health and welfare. The committee bill, however, requires that no regulation may be established if the health danger can be remedied through increased auto emission standards. The burden is thus put on the auto industry, and the oil industry is left pretty much free and clear. Third, the committee bill requires specific "finds derived from relevant medical and scientific evidence" to prove that a fuel or fuel additive endangers public health or welfare. The administration bill requires no such rigorous proof.

NAPCA has indicated it could probably not scientifically justify banning lead in gasoline under this precedure. Fourth, the administration bill provides authority for NAPCA to secure from industry fuel additive pollution research it reasonably needs to assess pollution characteristics of fuels. The Food and Drug Administration has such power. The committee bill provides only the power to secure research already done. NAPCA would thus be required to do much of its own research at a substantial additional cost. Tied to rigorous evidence requirement, it would be almost impossible for NAPCA to operate under this procedure.

Mr. CRAMER. Mr. Chairman, I was pleased to vote in favor of the rule on H.R. 17255, a bill to amend the Clean Air Act. The crisis of air pollution is one of the most critical domestic problems facing our Nation today. This problem must be faced up to and under the provisions of the bill we are considering here in the House today we are showing our concern by proposing to speed up, expand, and intensify the war against air pollution. We are attempting to assure that the air we breathe is wholesome once again. Mr. Chairman, I support H.R. 17255 and trust it will have the overwhelming support of the House.

Mr. DONOHUE. Mr. Chairman, I most earnestly hope and urge that this measure before us, H.R. 17255, providing for a more effective program to improve the quality of the air we breathe throughout this Nation, will be speedily and overwhelmingly adopted.

For several years we have clearly and rightfully recognized air pollution as a major national danger and we have initiated legislative efforts to control and eliminate this danger.

However, and unfortunately, the evidence that has been presented to us today obviously and definitely reveals that the procedures and instruments which we have been pursuing in this war against air pollution have been deficient in several important aspects, and the means and methods employed in implementing these procedures have been too often too slow

and much less effective than what is necessary and essential to timely achieve and complete the objective.

In summary, this measure, therefore, is proposed and recommended to strengthen existing legislation by declaring each State an air-quality-control region; by establishing and promulgating more stringent nationwide air pollution correction standards for new stationary sources, for automobile and engine testing, for automotive and aircraft fuels; by requiring Federal facilities to comply with all applicable standards; by imposing stricter and more severe implementation procedures and enforcement penalties; and by increasing and extending the appropriations authorizations to carry out these provisions over the next 3 years.

These new legislative provisions combined with the proven values in our existing programs will serve to project a more effective corrective and containment attack upon this major health menace of air pollution which threatens to continuously increase unless we promptly adopt more vigorous measures.

In essence and in reality, Mr. Chairman, this is a matter of life and death of our American people, and I hope that this bill will be unanimously approved without extended delay.

Mr. MONAGAN. Mr. Chairman, I support the Clean Air Act Amendments of 1970 to provide for a more effective program to improve the quality of the air we breathe.

I supported the Clean Air Act of 1963 and the Air Quality Control Act of 1967, and I wholeheartedly support the 1970 amendments to expand and intensify the offensive against air pollution.

The Clean Air Acts in 1963 and 1967 were good starts in the fight to alleviate air pollution hazards, but air pollution continues to pose a serious threat to the health and well-being of American citizens. We need more stringent regulations guarding the quality of the air we breathe and we need vigorous enforcement of the regulations designed to curb air pollution. I am pleased that this bill fulfills both of those requirements.

The bill under consideration contains several new provisions for insuring cleaner air: First, the Secretary of the Department of Health, Education, and Welfare is authorized and directed to establish nationwide air quality standards. Under the provisions of the bill States will be free to establish stricter standards, but they would have to comply with the minimum Federal standards. For administrative purposes, each State will constitute an air quality region, and if a State fails to adopt an acceptable air quality plan, the Attorney General is authorized to bring suit to secure abatement of polluters within the State who violate the Federal standards. A court may assess a penalty of $10,000 a day against persons failing to comply with the law.

Second, the bill sets forth Federal emission standards for new stationary sources of pollution, and provides for either State or Federal enforcement of these provisions. Under existing law, States set the emission standards and the new Federal standards will prevent States from trying to attract new industries by having lax pollution emission control standards.

Third, the bill provides for tighter automotive emission control standards and for new testing and certification procedures to insure that new motor vehicle engines comply with the regulations.

Fourth, the bill establishes new limitations on fuel additives which endanger the health and welfare of persons or which interfere with the

proper functioning of emission control devices.

Fifth, the bill, for the first time provides for the imposition of emission and fuel additive standards for aircraft.

The emphasis that this bill places upon automobile emission standards is entirely in order. Automobiles are responsible for

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over 60 percent of the Nation's air pollution, and if we can implement tight, workable emission standards in this area, we will be almost halfway home.

Also, the promulgation of nationally uniform standards recognizes that air pollution is a national problem and cannot be treated by establishing small pockets of resistance. Without national standards, States will never succeed in cleaning up their air if neighboring States do not go along with them in establishing standards.

This is a good bill, and I urge my colleagues to join me in supporting this measure.

Mr. BENNETT. Mr. Chairman, I am happy to support legislation to amend the Clean Air Act. My bill, H.R. 15871, is similar to the bill reported from the committee.

I strongly favor the thrust of this legislation. I belive it is needed and will strengthen the Clean Air Act.

Over the last 15 years, Congress has enacted laws to control air pollution. The first legislation passed was in July 1955, authorizing a Federal program of research in air pollution and technical assistance to State and local governments. In the period between 1955 and 1963 it became clear that not enough was being done to curb air pollutants, and in December 1963 the Clean Air Act was passed. Improvements to the Clean Air Act were made by Congress in 1965 and 1967, which I have supported.

The bill the House is considering today has a wide sweep to it, proposing the Federal Government to do more to halt the rising health and economic hazard of air pollution, which I am told costs the American people some $12 billion annually in economic loss alone. This estimated cost due to air pollution is damage to property and materials, agricultural losses, reduced property values and reduced visibility that may contribute to automobile accidents and airport delays. My own hometown of Jacksonville, Fla., has experienced two separate incidents of this type. In 1948 nylon blouses and stockings actually disintegrated on the wearers and in 1961 severe vegetation damage was experienced in the residential areas on both sides of the St. Johns River, which flows through the middle of Jacksonville. National Air Pollution Control Administration experts say there is little doubt that air pollution caused these incidents.

As President Nixon said in his message on environment, February 10, 1970:

Air is our most vital resource, and its pollution is our most serious environmental problem.

The problem is one which must be solved through strong legislation and also by individual action.

I believe the Federal program to halt air pollution is providing vital assistance to State and local communities. In the last several years it has been my pleasure to have Dr. John T. Middleton, Director of the Federal air pollution program, and his regional director, Gene B. Welsh, of Atlanta, participate in urban and environmental seminars in Jacksonville. They both gave excellent presentations and helped to alert local offi-

cials, civic leaders and citizens to the need and availability of anti-air-pollution programs. This has helped spur citizen action. In Jacksonville we have some very effective leaders in the fight to control air pollution. For example, Mrs. Lee Adams, is stimulating private and public efforts for clean air in Jacksonville.

Mr. Chairman, the House Interstate and Foreign Commerce Committee has provided substantial leadership for a nationwide battle against air pollution. I support this legislation to approve the strongest and mest effective measure to combat this problem.

Mr. PRICE of Illinois. Mr. Chairman, I am pleased to have this opportunity to express my concern regarding the needs of my area for combating air pollution and for ameliorating waste disposal methods.

These are among the crucial problems that must be faced today. They vitally effect the health and wealth of the entire Nation. The current focus on the area of ecology demonstrates the intense concern the people of the country have for these problems.

Last August, the St. Louis area experienced a pollution blackout — the atmosphere became unable to disperse pollutants. Not until the winds increased was the problem alleviated. In this day and age of enormous industrial complexes and increased use of roadways, we cannot wait or even count on nature to lessen the threats these problems create. After all, we cannot yet control the weather. The urgency of finding solutions to effectively control air pollution increases daily.

We must now increase our efforts towards finding an effective solution to this problem. To be effective, these efforts must include more stringent standards of air quality and methods of enforcement of these standards to be applied nationwide. There must, of course, also be a provision for curtailing pollution emissions to prevent crisis episodes as we experienced in August. The urgency of this problem must be impressed on all regions of the country, and each must be required to comply either with the standards published in the Federal Register or with equivalent ones. The regions, furthermore, must be required to conform in the most expedient way. Their plans, therefore, must be submitted for review and there must, in addition, be at intervals, inspections of each air quality control region.

There must also be a provision for overcoming the present confusion that exists in our air quality control region since both States were required to submit standards by January 6, 1970, and by July 5, 1970, each State must submit implementation plans.

Finding more practical and economical waste disposal methods must be of equal concern to us, especially since incineration increases air pollution.

The States must be directed to make greater efforts to initiate experimental waste disposal systems and to develop new techniques for solid waste disposal.

Methods must be developed to reduce the amount of money and effort spent on dumping and incineration—the two prevalent methods of disposing of wastes today. Improved techniques must be developed to recover useful materials from the waste and to lessen the amount of useless materials.

It is imperative that there now be additional endeavors by Congress to improve techniques of air pollution control and waste disposal. We must not rest in our efforts. If further research is required to find solutions

for ending air pollution or for finding practical or inexpensive ways of disposing of waste, let it be. But, concurrently, more effective methods and standards must be implemented.

The legislation that is currently before the House, H.R. 17255 and H.R. 11833, can effect these goals. Therefore, I strongly support these bills and urge their adoption.

Mr. COHELAN. Mr. Chairman, I rise in support of H.R. 17255, the Clean Air Act, but I do so with mixed emotions and many reservations.

This bill represents a step ahead in the effort to curb air pollution. I was particularly pleased to see that the Secretary of Health, Education, and Welfare is directed to establish nationwide air quality standards. I am concerned, however, that these standards will not be stringent enough or adequately enforced to curb air pollution.

I am especially concerned that this bill does not directly attack the primary cause of air pollution — the automobile. According to the Public Health Service, automobile emissions are responsible for 60 percent of all air pollution. This fact dictates the need for a concentrated attack on automotive emissions.

It was for this reason that I supported the four amendments that were offered today. The first authorized voluntary inspections of automobiles after the first 4,000 miles and required manufacturers to correct defects in the emission system.

Another amendment would allow the adoption of California emission standards as nationwide minimums. It would not preclude the setting of still tougher standards by NAPCA. It would insure that the current technology on the production line would be made available to all the States, not just California.

The third amendment would restore the administration bill's provisions with regard to fuel composition. Rather than placing the burden of proof on the agency, it would permit NAPCA to both regulate fuels which would be dangerous in current, high emission vehicles, and to require and obtain from industry the research necessary to determine the presence or absence of health hazards from fuel mixes or additives.

The last amendment would serve notice on the auto industry that further progress after 1975 is imperative. It would provide for the gradual adoption of emission standards based not on the possibilities of a pollution free internal combustion engine, but of the most pollution free propulsion system available. The object is clean air; the standards should be set to achieve that object, not to fit a particular type of engine.

Most important is that this Nation should have realistic and enforceable air quality standards. I am not convinced

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that the Secretary of Health, Education, and Welfare can act with enough speed. Thus I favor the imposition of some additional emission standards, such as the California standards, which are enforced.

I hope that when the bill returns to the House that the questions I have raised will be more satisfactorily answered.

Mr. RYAN. Mr. Chairman, the problem of environmental pollution is one of the most serious problems facing our Nation.

Air pollution is dangerous to our health and to our economic well-being. At last there is a public awareness and concern about air pollution which makes it possible to enact far-reaching legislation. H.R. 17255, the Clean Air Act Amendments of 1970,

does strengthen air pollution control programs, but it does not embrace the approach which I believe necessary.

One area where the legislation falls short is in section 112, which deals with emission standards for stationary sources. The bill provides the Secretary of Health, Education, and Welfare with the power to establish standards for such sources only when they are new and only when they endanger the public health and welfare—an unduly restrictive test. The test should be whether any source—old or new—degrades the quality of the environment.

There must be stringent Federal emission standards for all stationary sources, and these standards must be strictly enforceable.

Under the pending bill, each State would become an air quality region, permitting the Secretary of Health, Education, and Welfare to create interstate regions when he deems it necessary.

I fear that this emphasis on State action rather than regional action is a move in the wrong direction. Instead of turning to State governments which have too often demonstrated their unwillingness to take effective action to control pollution, the regional approach should be expanded. My bill, H.R. 17113, does just that.

Air pollution knows no political boundaries. It cannot be confined within the borders of any one State. Neither city nor State lines can hold the menace of air pollution, as is evident in the New York-New Jersey metropolitan area. My bill provides authority for the Secretary of Health, Education, and Welfare to create air quality regions and air quality control commissions which would set standards for the regions and enforce the established standards.

Another area of the bill which is not strong enough is that section dealing with enforcement.

My legislation, H.R. 17113, would permit the Secretary of Health, Education, and Welfare to issue court enforceable cease and desist orders against polluters.

In addition, my legislation makes acts of pollution civil offenses subject to fines of $50 to $2,000 for each violation. I think the combined approach of cease and desist orders and monetary fines provides the type of strict enforcement which is necessary to make the polluters of our environment understand that they can no longer poison our air with impunity.

Also my bill provides that a private citizen may bring suit in the name of and on behalf of the United States against the polluter when the Federal Government fails to take action.

H.R. 17113 bans leaded gasoline. It is clear that leaded gas is a significant contributor to air pollution. It is also obvious that unleaded gasoline is feasible; such a product is on the market today. Manufacturers would have 1 year to cease producing this detrimental fuel.

H.R. 17113 also provides for a State motor vehicle inspection program. This program would be run by the Secretary of Transportation, who would be able to impose, before approving any State highway safety program, the requirement that such a program include inspection of emission control devices as one of its features. In addition, grants would be made available to meet the costs of the inspection program.

I intend to support the amendments to be offered which would strengthen the motor vehicle pollution section of this bill.

They include substituting the lan-

guage of the administration's bill regarding the regulation of fuels and fuel additives; authorizing of voluntary inspection of emission control devices which have been in operation over 4,000 miles and mandatory correction of defects by the manufacturer; establishing as minimum national automotive emission standards, standards equivalent to those adopted and approved by the State of California for 1971, 1972, and 1974; and the establishment of motor vehicle standards based on the cleanest feasible propulsion system.

This bill provides $200 million for fiscal year 1971, $250 million for fiscal year 1972, and $325 million for fiscal year 1973. This is an excellent start. I suggested similar amounts in my bill with on exception—that $50 million be authorized to conduct and accelerate research and development solely in the field of alternatives to the internal combustion engine.

In the past, such research and development has not been singled out for specific funds, and thus the amount of such research and development has been inadequate.

In addition, my bill repeals section 105(c) of the Clean Air Act, which places a percentage limitation on the amount of Federal funds which any one State may receive. Needless to say those States which are more industrialized need air pollution funds more than those which are less industrialized. It is highly unrealistic to compare States like New York, California, and Illinois with more rural States. For this reason, I feel that section 105(c) should be repealed.

Mr. Chairman, our environment is so threatened that it is going to take strong measures to save it. Congress must provide tough national standards backed up by stringent enforcement powers and adequate funds.

Cleaning our air is not going to be easy. We will have to measure up to the task. We can no longer afford to talk about the problem. We can no longer afford to say—"this is a beginning; we'll be able to do more tomorrow."

There have been too many tomorrows in the past. Unless we make a firm commitment to preserving our environment, the future may hold no more tomorrows.

Mr. Chairman, I include at this point in the RECORD the statement I made before the Interstate and Foreign Commerce Committee on April 14, 1970, in which I discussed my bill, H.R. 17113:

STATEMENT OF HON. WILLIAM F. RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I appreciate the opportunity to offer testimony before the Public Health and Welfare Subcommittee of the House Interstate and Foreign Commerce Committee. We are all aware—and the general public is becoming increasingly aware—of the awesome havoc we have wrecked upon our environment. Perhaps more than any other problem facing this nation, pollution intrudes on every citizen's life every single day. Its severity may be most immediately apparent to the city dweller, but even the most isolated farmer in the most remote section of the country is likewise exposed to it.

Before discussing the legislation which I have proposed to amend the Clean Air Act, I should like to make some mention of the severity of the problem now at hand. Something approaching 200 million tons of contaminants are now hurled into the atmosphere every year. These pollutants range from the noxious and highly visible soot pouring out of industrial smokestacks to the colorless and odorless, but potentially lethal, carbon monoxide produced by automobiles.

Periodically, this infusion of gases and solid particles into the atmosphere reaches a point of over saturation. We are then subjected to the killer smogs which have hit Donora, Pennsylvania, New York City, Los Angeles, and other communities. It is, almost literally, pure luck that the disasters thus far have not been even more acute in number of victims and in duration.

Let me just point to a few statistics on pollutant levels to demonstrate the daily haz-

ards we endure. While the carbon monoxide content in clean, dry air near sea level is .1 parts per million, the average daily content in midtown Manhattan often exceeds 15 parts per million during business hours. The oxidants component in clean, dry air near sea level is .02 parts per million; the average daily content at East 121st Street in Manhattan is .04 ppm's. As compared to .001 parts per million of nitrogen oxide in clean, dry air near sea level, the average daily content at East 121st Street is 109 ppm's. And the comparative figures for sulphur dioxide are .0002 ppm's in clean dry sea level air and .111 ppm's at East 121st Street. Finally, suspended particulates average 124 micrograms per cubic meter in Manhattan's air.

These statistics are not unique. Nor are they unusual. Anyone who has traveled through Gary, Indiana, Chicago, Los Angeles, Cleveland, or a hundred other cities, has seen the layer of smog overhanging their skylines. Anyone who suffers from emphysema or asthma or bronchitis has experienced the agonies of polluted air. Anyone who has been caught in a traffic jam, or who has driven the streets of any town or city, has been subjected to a small part of the over 90 million tons of contaminants spewed forth from automobile exhaust systems.

Perhaps even more frightening is the very real peril that the entire world's heat balance is going to be irreversibly altered and that all of human life—not just people peculiarly susceptible to the noxious pollutants filling our air—will be endangered.

We are all victims of our own folly. And

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yet we are all culprits, as well, for each of us is a polluter. Certainly it would be more comfortable to place the blame on impersonal entities—"the system," "the establishment," or "big business." But, while corporate action and governmental inaction have played a major role in bringing us to our present disastrous condition, they have been ably assisted and abetted by each individual, ready to reap the personal benefits of convenience and ease. Every enzyme pre-soaking, every aluminum can, every weekend car rental, every pre-packaged cook-and-serve dinner contributes to a polluted environment.

Of course, moralizing is no answer. Nor, in fact, is it even fair to say that we have arrived at our calamitous state solely because of greed or indifference. There are very real conflicts in legitimate social goals. We may now understand the effects of insecticides on the ecological balance, but who will argue that underdeveloped nations must continue to live with plague and widespread disease? We may recognize that massive urban construction poses massive disposal problems, but who will tell the poor that they must continue to live in sub-standard housing?

We will not resolve our conflicts by arguing for a return to a pre-technological society. But we can, and indeed we must, begin to act rationally in choosing between competing alternatives to achieve a desired end.

There is no question that transportation for commuters into the inner cities is essential. But there is very real cause to consider whether hundreds of thousands of large, internal combustion engined automobiles, each driven by a lone commuter, are the most beneficial means to achieve this end. There is no question that speedy travel between the coasts is needed, but it may well be that the extra hour or two gained by larger and faster jets is not worth the accompanying noise.

These are just two examples of the approach which we, as individuals and as legislators, must begin to follow—assessing our actions, and the programs and activities to which we commit funds, in terms of their impact upon our environment, and choosing those which minimize that impact, even if the expense is thereby higher.

This approach looks to the long term reordering of our consumption habits. But the short term, as well, offers us opportunity to undertake effective and immediate steps to ameliorate air pollution and remediate its causes. The legislation which I have introduced mandates and enables aggressive action to these ends.

H R. 17113, which amends the Clean Air Act, 42 U.S.C. 1857, provides several distinct components, each of which is strong by itself, and which together provide a coherent, stringent strategy to meet the challenges which clearly have not yet been met, and which the Administration bill clearly fails to meet

Perhaps most important, the bill provides power to enforce the law. Hitherto, the Secretary of Health ,Education, and Welfare has only had the authority, under Section 108(k) of the Clean Air Act, to request the Attorney General to seek an injunction to abate pollution sources "upon receipt of evidence that a particular pollution source or combination if sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and finding that appropriate State or local authorities have not acted to abate such sources. . . ."

This provision is brigaded with language diminishing its utility—"imminent and substantial endangerment." It is susceptible to use only if the State or local authorities have not acted, and a finding has been made to this effect. H.R. 17113, on the other hand,

gives strong and powerful enforcement authority. The Secretary may issue cease and desist orders, the regional commission which the bill creates in another section may do so, and similarly, the States are required to include such power within the plans they must tender for approval to the Secretary.

I have just made mention of regional commissions, and I want to more fully explain this reference. H.R. 17113 authorizes the Secretary of Health, Education, and Welfare to establish air quality regions, and Air Quality Control Commissions to set standards for these regions. These standards may be more stringent than the nationally applicable standards set by the Secretary, and, in such case, they will then supersede the Federal standards, as well as State standards which are weaker.

I recognize that the Clean Air Act now provides, in Section 105, for interstate air quality agencies or commissions. However, these bodies do little, and have virtually no power.

The commissions I propose do have major functions, and they have firm authority to enforce the standards they establish. And these two characteristics are essential. Air pollution is virtually by definition a problem which knows no man-made boundaries. City borders and state lines have significance for taxing bodies, but they are irrelevant in terms of deterring the smoke of the steel plants in Gary from polluting the skies over Chicago. The stench of the New Jersey chemical plants is shared in unwilling comity by New York City, and the DDT sprayed over the farms of California disperses in the air over Arizona and Nevada.

Regional commissions, mandated to set firm air quality standards, and armed with the Secretary's authority to issue cease and desist orders, are the key to dealing with air pollution rationally and effectively.

H.R. 17113 not only provides adequate enforcement power, and it not only creates regional commissions equipped to abate pollution. It further authorizes the Secretary of Health, Education, and Welfare to set nationally applicable standards for ambient air quality, and for designated industries. The need for national standards naturally follows from the pervasiveness of the problem, and the wide dispersal from their sources of pollutants. It accomplishes little for New York State to establish meaningful pollution control standards if her neighboring states set only minimal restrictions.

In the same vein, national standards for designated industries are a distinct need apart from nationally applicable standards of ambient air quality. While the latter establish pollution levels in terms of the presence of gases and particles in the air, the former go directly to governing the processes of particular industries which call for special provisions. Thus, the steel industry must be governed by restrictions which address the particular methods and systems which it employs, and those pollutants for which it is most directly responsible.

H.R. 17113 also embodies a provision which I believe especially important in putting meaningful penalty behind the fine rhetoric which is so common in condemning polluters. Acts of pollution are made civil offenses, and polluters are subject to fines ranging from $50 to $2,000 for each violation. Thus, not only is cease and desist authority provided by my bill to stop acts of pollution, but monetary fines are also authorized to punish those who are patently guilty of degrading our environment. What is more, in those instances, should they arise, where the Federal Government fails to bring an action to recover these penalties, the private citizen is authorized to bring suit in the name of and on behalf of the United States against the polluter.

This is far reaching legislation, but it is necessary. We have seen that the government has done too little and even that has been done too seldom. Yet, our air continues to decline in quality. This degradation of our environment is not going to await the arousal of bureaucracies; concerned citizens must be given the opportunity to protect themselves and society by bringing suit when the government fails to do so.

There are several other provisions of H.R. 17113 to which I want to allude briefly. The bill contains a section providing for Federal assistance to those workers whose plants have been ordered to cease and desist their polluting activities, and who have thereby had to either lower their output or cease operation while readjusting their manufacturing methods.

My bill also bans the making of leaded gasoline. I think the evidence abundantly clear that the lead which is entering our atmosphere through the use of leaded gasoline in automobiles is one of the most perilous pollutants, and, yet, also one of the most easily eradicable pollutants in terms of cutting off further entry into the air. Thus, H.R. 17113 gives just one year to cease manufacture of this product.

My bill also provides for a state motor vehicle pollution control inspection program. The Secretary of Transportation would be able to impose, before approving any state's highway safety program, a requirement that the program include, as a part of vehicle inspection, procedures to assure the adequacy of performance of emission-control devices in motor vehicles. The Secretary of Transportation would establish standards based on

pollution emission standards established by the Department of Health, Education, and Welfare. Grants would be available to assist in meeting the cost of this program.

Finally, H.R. 17113 repeals that section of the Clean Air Act—section 105(c)—which places a percentage limitation on the amount of Federal funds which may be received by any one state. It is obvious that industrialized states such as New York, California, and Illinois, have far more severe pollution problems than do the rural states. Consequently, their need for funds is far more acute, and repeal of section 105(c) recognizes this fact.

Obviously, money is a prime requisite and H.R. 17113 recognizes this by authorizing for the Clean Air Act $200 million for fiscal year 1971, $250 million for fiscal year 1972, and $300 million for fiscal year 1973. In addition, $50 million is authorized to conduct and accelerate research into and development of alternatives to the internal combustion engine.

I also want to briefly discuss the problem of waste disposal and the legislation which I have introduced—H.R. 642—to meet this problem. The statistics here are no less stark than those I recited earlier concerning air pollution. On the average, each person in this county generates about 7 pounds of trash a day.

About 73 percent of refuse now goes into open dumps: 15 percent is incinerated; 8 percent goes into sanitary land fills; 1 percent into compost; and only about 3 percent is salvaged.

Obviously, the need for solid waste disposal facilities is enormous. H.R. 642 would meet this need. It would permit the Secretary of Health, Education, and Welfare to make grants for surveys by state, interstate, municipal, and intermunicipal agencies of solid waste disposal practices and problems within their jurisdiction. Money would also be available for these agencies to develop solid waste disposal plans. In addition, the Secretary would be able to make grants for construction of solid wastes disposal facilities, including completion and improvement of existing facilities.

At present, the national average expenditure on waste disposal is $6.81 a year per persons. This amount in no way comes close to meeting the costs which must be incurred if we are to grapple in any way adequately with the annual total of 180 million tons of

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solid waste. I recognize that to some degree this paltry total of $6.81 per person reflects a reluctance upon the part of local communities to meet their responsibilities. But, the overwhelming problem is not one of failure to recognize the problem, but rather, a lack of funds to deal with it.

H.R. 642 provides such funds. It raises the funding for those portions of the program administered by the Secretary of Health, Education, and Welfare for fiscal year 1970 from $19,750,000 to $152 million, and it authorizes $216 million for fiscal year 1971 and $236 million for fiscal year 1972. And for those portions of the program administered by the Secretary of the Interior, there is authorized $15 million for fiscal year 1970, $18 million for fiscal year 1971, and $21.5 million for fiscal year 1972.

In summary, I want to emphasize that the degradation of our environment calls for effective and forceful legislation. H.R. 17113 and H.R. 642 answer this call. But, equally as important, there must be a commitment on our part, on the part of the Executive branch, and on the part of every citizen and business, to stop the slow but steady suicide we have embarked upon. We can deplore and we can implore endlessly, but rhetoric is no more than empty air—and in this case very dirty empty air. We can legislate and we can appropriate. But legislation and money are only allies of action and for enforcement. We are truly using up our trump cards, and the game may soon be over—permanently. I do not want to sound overly ominous or to be a prophet of doom, but the peril allows no less.

Mr. STAGGERS. Mr. Chairman, I rise to close the debate on this side, and to say I believe the committee has considered this bill very well.

As I have said, hearings started in December and ended in April. The committee members heard all the testimony. After hearing all the testimony they came up with the strongest bill they could.

I believe it is a good bill and a strong bill, regardless of any aspersions or innuendoes which might be cast against it.

It is a little like anything else we do in life. We would like to do things right now, but we do not have the technology necessary and have many times not done all the things which ought to be done.

The situation is a little bit like the situations which faced the late President Kennedy when he said in 1961 that he hoped to have a man on the moon and back during the decade.

Well, this has happened, but it did not happen without a lot of hard work by those involved. We hope not 10 years from now but 3 years from now we will have the technology by which we can control a great many of these things. I know some say that the only way to control it is to get rid of the internal combustion engine. However, anybody who has any commonsense knows that we cannot do that now. It will take time. We are trying to clean it up so it will not be a pollutant to the air.

Mr. Chairman, this is a strong bill and as good a bill as we could come out with at this time. It certainly gives everyone a chance to develop those things and do those things that are necessary to stop pollution in this country.

Mr. SPRINGER. Mr. Chairman, in reiterating what the chairman of this committee has said, I would like to make two points if I can.

All of the amendments which are being submitted here today were before our committee in one form or another. They were up for discussion. We have considered everything here, every alternative that I know of.

The second point I want to make is that we in this bill greatly changed the existing law of 1967 and we strengthened it in five different ways that I outlined in my speech a few minutes ago.

Everything that has been talked about here today or which will be introduced by way of amendment was discussed at great length in the committee. We finally came to you with this bill. It is a good bill, it is an improved bill, and it is a strong bill. It has a tremendously increased authorization to back it up.

May I say that I think we went as far in this bill as we could go with the knowledge we have at hand at the present time and still make a reasonable commonsense version.

Mr. YATES. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. This bill is a good bill. It has been well conceived and well thought out and is well appropriated for.

Now I yield to the gentleman.

Mr. YATES. Will the gentleman state why any one of the States of the Union which wanted to promulgate stricter emission standards for automobiles than those which are set forth by the Federal Government should not be allowed to do so?

Mr. SPRINGER. This was gone into in great detail. I will not go into all of it here as to why it was, but it was felt that you could not have 50 different emission standards. That is the reason, and that could conceivably happen. The gentleman is talking about one of the amendments that the gentleman's colleagues will introduce, which I will be opposed to. Why? Because he will let any locality that wants to set its own emission standards. When you do that it means that you cannot drive from one county to another in Illinois, just the same as you could not drive in 50 different States, and you would have all different laws.

Mr. YATES. Suppose the State of Illinois wants to set up stricter emission standards for automobiles in the same way as the State of California. Why should it not be permitted to do so?

Mr. SPRINGER. May I say that we would not have done it in the State of California except in one county that has had the worst situation in the world, with the possible exception of London. There was a good reason for the exception of California.

Now, If I may, I would like to go ahead.

Mr. Chairman, I want to emphasize that I think this bill is a good one

and the chairman would not have brought it out to you unless he thought it was a good bill. He has been strong for a good, sound clean-air bill which was well financed. And, in that effort, I have taken every opportunity I could to back him up.

Mr. Chairman, this bill came out of the committee unanimously. I do not mean that everyone agreed with every single provision of it, but there certainly was not any opposition that I knew of to the bill as it finally came to the floor of the House.

Mr. Chairman, I wanted to make that statement to the members of the Committee at this time before we get into the amendments.

Mr. Chairman, I have no further requests for time.

Mr. STAGGERS. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. There is being no further requests for time, pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute printed in the reported bill as an original bill for the purpose of amendment.

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Mr. STAGGERS (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

AMENDMENT OFFERED BY MR. VAN DEERLIN

Mr. VAN DEERLIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VAN DEERLIN: On page 44, line 3, strike out "or".

Page 44, line 4, insert before the period the following: ", or (C) to fail to comply with the requirements of section 206(f)(2)".

Page 44, line 24, strike out the quotation marks.

Page 44, insert after line 24 the following:

(f)(1) The Secretary shall conduct, or cause to be conducted such inspections, tests, studies, research and investigations as may be necessary to determine whether new motor vehicles or new motor vehicle engines conform to the regulations prescribed under section 202 of this title, after such vehicles or engines have been in operation, under normal conditions of maintenance and use, at least 4000 miles. Any inspection of a new motor vehicle or new motor vehicle engine, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any inspection program established pursuant to the last sentence of subsection 108(c)(1) of Title I of this act.

"(2) If through testing, inspection studies or other investigation of representative numbers of any class or category of motor vehicles or motor vehicle engines, or by other means, the Secretary determines that such class or category of new motor vehicles or new motor vehicle engines, operated under normal conditions of maintenance and use, does not conform to the regulations prescribed under section 202 of this Title he shall immediately notify the manufacturer or manufacturers thereof of such determination of non-conformity. The notice shall contain the finding of the Secretary and shall include all information upon which the findings are based, and shall be published in full in the Federal Register as promptly as possible. The Secretary shall within thirty days of such notice afford all interested parties an opportunity to present their views and evidence in support thereof, at a public hearing or in writing, with regard to the Secretary's determination of non-conformity. The Secretary shall within a reasonable time, but in no event more than 60 days from the date of notice of non-conformity, direct the manufacturer to provide prompt notification of such non-conformity to the owners of all motor vehicles or motor vehicle engines included within the class or category, unless the Secretary, on the basis of all the facts and evidence in the public record of such proceedings, shall conclude that the class or category or new motor vehicles or new motor vehicle engines is in conformity with the regulation, and publish such conclusion together with the reasons therefore in the Federal Register as promptly as possible.

"(3) The notification to the owner provided for in this subsection shall contain a clear description of the non-conformity, a statement of measures to be taken to remedy such non-conformity and a commitment of the manufacturer to cause such non-conformity to be remedied at no cost to the owner.

"(4) The U.S. District Court shall have jurisdiction to restrain violations of this section or any order of the Secretary issued under this subsection, upon petition by the appropriate U.S. Attorney or the Attorney General on behalf of the United States."

Mr. VAN DEERLIN. Mr. Chairman, I regret the need for imposing both on the Clerk and the Members of the House the reading of such a long amendment, but it is one which is quite important in a piece of legislation which is in itself of paramount importance.

The existing law provides only for the testing of prototype vehicles of emission-control devices. The committee bill which we have before us would improve upon this to the extent that it would require assembly line testing. If that is the best we can manage I am for it, but I think we can do still better. I think that the consumer out there who has bought a car, and has relied upon the warranty of purchase, should have some way of making certain that the car he is driving will hold up in the kind of condition that it was when it left the assembly line.

The committee report itself bears out the need for this. It says:

Experience has shown that the testing and certification of prototypes does not of itself assure that automobiles coming off the assembly line which are sold to the public comply with the Federal emission standards. Therefore, the legislation authorizes inspection of assembly plants and the testing of automobiles and engines coming off the assembly line.

That is from page 3 of the report.

The experts tell us that no testing is really valid until the devices have been operating at least 4,000 miles—and that means operating under driving conditions, not under protected conditions that prevail in the testing of prototypes at the factory.

As a matter of fact, the present regulation on the prototype says that we should expect these devices to work for 50,000 miles.

Now, some interesting tests have been conducted in California, conducted on a controlled basis within the Hertz rental car fleet, and the findings there were that 53 percent of the Hertz cars tested between 10,000 and 11,000 miles were deficient in one respect or another in regard to their effluent-control devices.

Adequate test equipment for this purpose costs about $10,000 per unit, and it is possible that through the adoption of this amendment it would mean that $1 million would have to be spent across the Nation to provide these consumer tests. The fact of the matter is that we shall be spending about $750 million as consumers on these devices, and it seems reasonable that $1 million should be spent to make sure that we are not wasting the $750 million. The American public is entitled to know that the devices will last, that they are working, that they are going to help restore clean air.

Mr. Chairman, I would be willing to answer any questions anyone may have on this amendment.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. VAN DEERLIN. I yield to the gentleman from Florida.

Mr. ROGERS of Florida. Mr. Chairman, I notice that the amendment would require this to be voluntary. Is that correct?

Mr. VAN DEERLIN. The reason for that wording, I would say to the gentleman from Florida, is that many States have a requirement for mandatory testing. We would not want to exclude these from coming under the protection of the amendment, but in

addition to those States which do require mandatory testing, I would like to know that every consumer could obtain it voluntarily.

Mr. ROGERS of Florida. I think the gentleman would want the House to know that there is no State, insofar as I know, that has mandatory automobile testing for air pollution. Is that not correct?

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Mr. VAN DEERLIN. If these failures turn up in ordinary inspections as required, I want them to be corrected.

Mr. ROGERS of Florida. Not for emission standards. There is really no test, because we do not have the testing devices. Frankly, is that not basically the problem now in the country?

Mr. VAN DEERLIN. We have it in California, and we are doing something about it.

Mr. ROGERS of Florida. The gentleman knows that they are not doing anything as far as requiring testing on emission standards.

Mr. VAN DEERLIN. I will state to the gentleman from Florida that my son has spent time in court for violating the air with his car.

Mr. ROGERS of Florida. They did not have any testing devices. Many communities have ordinances which say if a person causes excess pollution, where they see a lot of smoke coming out, but what the gentleman is talking about is a lot different than emission standards as such, as I am sure the gentleman knows.

Mr. VAN DEERLIN. The gentleman from Florida knows that these devices are available.

Mr. ROGERS of Florida. I am not sure that they are yet available.

But in this case you are concentrating research and developing testing devices that can be used.

I think the House should also know before you vote on any amendment like this that we have directed the Secretary to develop testing devices which we do not have.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. STAGGERS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman. I certainly recognize the intentions of the gentleman from California [Mr. VAN DEERLIN], one of the very able members on our committee. I am very sure his intentions are only the finest and certainly insofar as his intention is concerned, certainly it is right. But I would like to point this out to the Members of the Congress right now.

The bill contains this language:

> At such time as the Secretary, after consultation with the State, determines that the achievement of an air quality standard under section 107(e) requires inspection of motor vehicles in actual use and that such inspection is technologically and economically feasible, the State shall revise its plan to provide for such inspection.

This is a part of the bill. They can do that under the State plan.

Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California, Mr. VAN DEERLIN.

The question was taken; and the chairman announced that the noes appeared to have it.

Mr. VAN DEERLIN. Mr. Chairman, I demand tellers so that we might see a little show down the middle aisle and a little of the feeling and the mood of the membership.

Tellers were refused.

So the amendment was rejected.

Mr. WAGGONNER. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I take this time to

try to make a little legislative history that might in time come to be important to all of us.

I do not think there is any argument among us about whether or not we ought as best we can to provide for cleaner air. Certainly, we all agree in this respect.

But I want to ask some questions of the committee chairman or the ranking minority member.

First as to section 206 on page 39 of the bill, which has to do with motor vehicle and motor vehicle engine compliance testing and certification.

Is it intended in the language of the committee bill that the Secretary of Health, Education, and Welfare will be required to test on the assembly line and certify every single engine produced for a period not to exceed 1 year before the manufacturer can sell that engine?

Mr. STAGGERS. I might say "No," categorically.

Mr. WAGGONNER. Then what is proposed?

Mr. STAGGERS. It means he can keep testing and when there is evidence that there is any failure or they do not come up to place, they can stop the assembly line right there and stay there.

Mr. WAGGONNER. It means he can, until he is so satisfied?

Mr. STAGGERS. That is right.

Mr. WAGGONNER. Is it necessary every time an engine design is changed by the manufacturer that he submit this new engine design to the Secretary of Health, Education, and Welfore for testing and certification?

Is the answer to that "No"?

Mr. STAGGERS. I would say this. I do not think he has to, if it is a trade secret, as to whatever he is doing—I do not think you would have to give this in advance. But they do have to meet certain standards. This is the criteria—they have to meet certain standards. I do not think they would have to show the design or anything, but after they started performance they have to meet certain performance standards.

Mr. WAGGONNER. How can this determination be made unless the Secretary of Health, Education, and Welfare engages in this testing which will precede certification?

Mr. STAGGERS. I would certainly say that he would have to. The only way he could do it would be on the first ones tested.

Mr. WAGGONNER. Then, in view of the gentleman's answer, if an automobile manufacturer or an engine manufacturer should change the design of the engines that he produces in mass production—and just for argument's sake we will say he produces 100,000 of these engines—then the Secretary of Health, Education, and Welfare could come in and revoke or suspend the certification of an engine for which the design has been changed because, in his opinion, the new engine does not meet the standards that he had set forth.

Mr. STAGGERS. According to the legislation, the manufacturer would have to submit a prototype and it would have to be tested.

Mr. WAGGONNER. Then the answer to my first question should properly have been that when an engine design is changed, the manufacturer must submit a prototype for testing?

Mr. STAGGERS. That is correct. I did not understand your question and I did not answer it correctly.

Mr. WAGGONNER. Let us talk a little bit about fuel. Section 8 of the bill, which has to do with standards with respect to fuel, states that:

"(f)(1) The Secretary may, on the basis of specific findings made in accordance with subsection (g), establish standards respecting the composition or the chemical or physical prop-

erties of any fuel or fuel additive by specifying limitations on (or providing for elimination of) ingredients (including additives) or on the physical or chemical characteristics of any fuel or class of fuels (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Secretary finds has been developed to a point where in a reasonable time it will be in general use, on a significant number of motor vehicles or motor vehicle engines.

Am I to believe that under the authority of this section establishing standards with respect to fuels, the Secretary of Health, Education, and Welfare can, today, because no time is prescribed, if he so desires and feels he has sufficient information, say to the manufacturers and producers of fuels, "You have got to take the lead out of gas. You have got to put another additive in. You have got to change your formula"?

Mr. STAGGERS. Under another section of the bill the Secretary is required to make specific findings that that it affects either the health or the operation, and so forth, before he can put these measures into operation, and it must be based upon the facts and not allegations that he does not know about, and they have to be so stipulated.

The CHAIRMAN. The time of the getleman from Louisiana has expired.

(By unanimous consent, Mr. WAGGONNER was allowed to proceed for 5 additional minutes.)

Mr. WAGGONNER. I would like to ask the chairman this question. Let us consider the Department of Health, Education, and Welfare. Under existing legislation, the Secretary of Health, Education, and Welfare made application of existing law which would allow him to remove from the market under conditions he could prescribe DDT. Now they are having second thoughts about DDT and they think they made a mistake. The scare has already been introduced in the minds of the public that lead is harmful to health, that it is a pollutant, and the administration apparently shares some concern because they apparently want to get lead out of gasoline. It might well be. I do not know. But they propose that a tax be placed on leaded gasoline, in effect, to try to take leaded gasoline off the market as well as produce revenue.

If the Secretary feels that he already has sufficient information, can he now

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say, "You cannot manufacture gasoline and market it any longer that has lead in it"?

Mr. STAGGERS. No, he cannot. If the gentleman is talking about present law, as it is now constituted, he cannot.

Mr. WAGGONNER. I am talking about the law as it will be by these amendments.

Mr. STAGGERS. He will have that authority.

Mr. WAGGONNER. And he could do that tomorrow?

Mr. STAGGERS. If he has the facts, and he has proven this by facts, that they are a danger and poisonous—I am trying to find it in the bill so I can cite it to the gentleman.

Mr. WAGGONNER. We are getting into some dangerous ground, because we are talking about something we have not thought through.

Mr. STAGGERS. It says in this clause under section 8:

"(g)(1) Any standards pursuant to clause (A) of subsection (f)(1) shall be established by the Secretary on the basis of specific findings derived from relevant medical and scientific evidence, including (in the case of a standard with respect to a motor vehicle fuel or fuel additive) a finding that it is not otherwise technologically or economically feasible to

achieve the emission standards established pursuant to section 202 of this Act.

Mr. WAGGONNER. Then the gentleman is saying to me, Mr. Chairman, that if information already exists or they believe they have that information which will prove that lead in itself in gasoline is harmful, whether they are right or not, but they believe they are right, if they have developed this information before this proposal is signed into law, it will be within the power of the Secretary of Health, Education, and Welfare at any point he desires to say that they must take lead out of gasoline.

Mr. STAGGERS. It is not based on belief. This says specifically that it is based upon specific findings.

Mr. WAGGONNER. When must those findings have been made?

Mr. STAGGERS. If this is possible, and I do not think it is at the present time, then it would have to be constituted on specific findings derived from relevant medical and scientific evidence.

Mr. WAGGONNER. The gentleman's answer is quite interesting. The gentleman just made the statement he did not think this was the case or possible at the present time. Is the gentleman saying to this House that nothing during the course of consideration of these amendments was produced in evidence to show that lead was harmful in gasoline?

Mr. STAGGERS. I did not say that.

Mr. WAGGONNER. That is the net effect, Mr. Chairman, of what the gentleman just said.

Mr. STAGGERS, No; I do not want the House to believe that.

Mr. WAGGONNER. Let us get this record straight because this legislative history is important, and none of us has had a chance to study this except those on the committee. This legislation was scheduled yesterday, and it came out of the blue, with many of us not having had an opportunity to prepare ourselves.

Mr. STAGGERS. The chairman of the committee had nothing to do with that. The chairman of the committee was called yesterday and asked if he could appear before the Rules Committee, and I am complying with what I was requested to do.

I think there is nothing wrong with this. I think it is perfectly clear. There is no shenanigan. Some legislation was needed on the floor, and the chairman said he would agree to be helpful to the House and to carry on business.

Mr. WAGGONER. I know there is no shenanigan. I do not imply that.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman from Florida.

Mr. ROGERS of Florida. Mr. Chairman, I think if the gentleman will look at this in context, he will see what we have done. As the gentleman knows, under the existing law, all of the burden of cleaning up emissions that were polluting the air from automobiles was placed on the automobile industry. That was where the burden was placed. The automobile industry said, "We cannot meet Goverenment standards in 1975 if there is lead in gasoline." Now there was no authority for the Secretary to do anything about gasoline.

Mr. WAGGONNER. Let me ask a question. Does that mean that Government standards are bad, or that lead in gasoline is bad?

Mr. ROGERS of Florida. We are saying it is the joint burden of the oil industry and the automobile industry, because both products go to produce the pollution, so what this amendment does very simply is to say that the Secretary will also have the right to bring in the oil industry to help meet

the problem, and he does this in a very precise way.

The CHAIRMAN. The time of the gentleman from Louisiana has expired.

(By unanimous consent, Mr. WAGGONNER was allowed to proceed for 5 additional minutes.)

Mr. ROGERS of Florida. Mr. Chairman, if the gentleman will yield further, it is outlined how the Secretary does it. If all the emissions standards could be met and we could clean up the air without going into regulating any one industry, that would be fine, but it happens that this is not so.

So we have established now the authority where, if there is evidence that it is necessary to take out or eliminate certain components or certain additives to gasoline—and lead is one—that will be considered, no question about it, and if that is necessary, this bill will give the Secretary that authority.

Mr. WAGGONER. Is it intended that in changing the gasoline formulas, if the Secretary says that they must take something out, that the formulas, as is the case with engines, for new fuels must be submitted to the Secretary for approval?

Mr. ROGERS of Florida. Let me say, we did not give authority—which is what I believe the gentleman is concerned about—for the Secretary to go in and tell the companies how to make gasoline. We do not tell them how to make an automobile engine. We do not want to get into that and do not want the Federal Government to do it.

Mr. WAGGONNER. And there is a good reason. We do not know how to do it, either.

Mr. ROGERS of Florida. I understand. We are not going to permit that.

We have said that if there is a component part of the gasoline or if there is an additive, which the facts show will affect the public health, and medical and scientific facts show this, or will prevent the emission standards from being met, the Secretary may act as to that component part or that additive.

Mr. WAGGONNER. What appeals are made available to the manufacturer of an engine or the producer of a fuel, if they take issue with the findings of the Secretary of Health, Education, and Welfare?

Mr. ROGERS of Florida. They have the Administrative Procedure Act.

Mr. WAGGONNER. And only the Administrative Procedure Act?

Mr. ROGERS of Florida. And an appeal to the court, from the Administrative Procedure Act.

Mr. WAGGONNER. In some cases they would.

Mr. ROGERS of Florida. They would in this case.

Mr. WAGGONNER. Not in all cases do people have the right of appeal to the court under the Administrative Procedure Act. In some instances under the Administrative Procedure Act the decisions are final, when they render a decision.

Mr. ROGERS of Florida. I believe they would in this instance.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. WAGGONER. I yield to the gentleman from Texas.

Mr. KAZEN. Let me see if I can understand this. If the Secretary of Health, Education, and Welfare decides that lead is injurious to public health and that they then order lead be taken out of gasoline, and lead happens to be a component upon which high compression engines depend to run——

Mr. WAGGONNER. As it is.

Mr. KAZEN. As it is—and those

engines are already on the road now, that means they will stop the manufacture of that gasoline, and those cars then must stop. Is that the idea?

Mr. WAGGONNER. I should like to have an answer from some member of the committee.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to the gentleman from Florida (Mr. ROGERS) for an answer.

Mr. ROGERS of Florida. I thank the gentleman for yielding.

First of all, it will have to be established. As we know, the automobile industry is now reducing the compression in the engines. This is already being accomplished in the 1971 models.

Mr. KAZEN. I will take a 1970 high-compression engine. What will I do for gasoline?

Mr. ROGERS of Florida. Now, first of all, there is a nonleaded, high-test gasoline already being produced for high-compression engines, and already one company is producing it—Amoco.

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Mr. KAZEN. Yes; but that does not work in the high-compression engines.

Mr. ROGERS of Florida. Yes; that is already a nonleaded gasoline. Amoco produces it for the high-compression engine, not for the low-compression engion. That is all they produce now. Other companies are also producing.

Mr. WAGGONNER. At a cost of 2 cents a gallon more and it still contains pollutants in the form of aromatics.

Mr. ROGERS of Florida. They will have the necessary gasoline to run the automobiles now on the road.

Mr. WAGGONER. Does the gentleman recognize that conservative estimates made by people who know something about the refinery operation, capacity, and cost in this country are that it will take in excess of a minimum of $6 billion to convert the refineries of this country to produce unleaded gasoline?

Mr. ROGERS of Florida. I have heard the claim made, and that other people say it may go $2 billion. That is quite possible. Amoco is now producing high-compression gasoline without lead at 1 cent over the regular price.

Mr. SATTERFIELD. Mr. Chairman, will the gentleman yield?

Mr. WAGGONER. I yield to the gentleman from Virginia.

Mr. SATTERFIELD. I should like to make this observation; the hearings are replete with evidence, statement after statement that if we go to nonleaded gasoline at this time then for the next 10 years we will have two classes of gasoline in this country, one to take care of the present population of automobiles, and a different class of fuel for the new population of motor vehicles and that this will cost somewhere between $3 billion and $6 billion to the petroleum industry alone to deal with such a situation.

The CHAIRMAN. The time of the gentleman from Louisiana has again expired.

Mr. PICKLE, I move to strike the requisite number of words.

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I do not just yet. I will try to yield later.

This is a section of the bill that came in for considerable discussion in the hearings and later in meetings of individuals trying to find a better answer. The members of the committee know that I have had reservations about this particular section, and I felt we ought to eliminate the words "the composition of" when we talked about gasoline. The committee felt, though, that we ought to keep it

in there. I must say that there are certain safeguards, and I want to be fair to the committee. I believe they tried to protect what they thought were the best interests of those people who manufacture gasoline. Overall the Secretary must make specific findings based, exactly as the chairman of the committee read, on medical and scientific evidence. Then the Secretary could establish certain safeguards specifying a limitation on the composition of the fuel or the additives if two things take place: One, if they endanger the public health and, second, if they would impair to a significant degree the performance of any emissions product. I think those are good safeguards. The Secretary must meet those two requirements. That does give us some assurance that you will not just automatically overnight have in a change in the formulas.

I will ask this committee this question. I understand the intent of the committee was that it would just use the word "additives." Additives are our real problem. There is no intent on the part of the committee to try to establish a formula here for one grade of gasoline. You are not trying to get at the composition of gasoline but rather to control the emissions of pollutants that come out of the exhaust. We are really trying to get at the additive problem and not so much at the composition or the grade form of the gasoline?

Mr. ROGERS of Florida. Will the gentleman yield?

Mr. PICKLE. I yield to the gentleman from Florida.

Mr. ROGERS of Florida. I think the gentleman knows that we are not trying to say to a manufacturer that he has to make his gasoline in a particular way. What we are saying is we want the Secretary to have the authority wherever the facts show that a particular component or an additive of gasoline—a particular item—affects adversely the public health or prevents emission standards from being met, then the Secretary can say that this item should be reduced or eliminated. It is put on that basis and the findings are made. He does not go in and say that that is the way you will make gasoline. Yes. You are correct on that.

Mr. PICKLE. The committee is not attempting to establish one grade of gasoline for all manufacturers?

Mr. ROGERS of Florida. We are not trying to establish any kinds of grades. What we want is for the public health to be protected and auto emission standards to be met for the benefit of the public health.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield?

Mr. PICKLE. I yield to the chairman.

Mr. STAGGERS. I think the gentleman from Louisiana was worried about the fact that this would be a hard ruling made in the courts. Of course, these matters come up under the Administrative Procedure Act, and then they have recourse to the courts. If they feel, after all of the hearings have been laid before them, that these were not the facts and that the ruling was wrong, the court will have the final decision.

Mr. PICKLE. The Chairman, I think, would say that those people who manufacture gasoline have given full cooperation in the consideration of this bill. They are not trying to throw roadblocks in the way. But certainly they will be concerned if you are trying to say to them that the Secretary can establish standards that will allow the manufacturer to have only one grade of gasoline. I think if we can have that assurance, it will give them the sense of assurance that they are entitled to.

Mr. STAGGERS. I think it is the in-

tent of the committee all the way through.

Also I repeat again what the bill has to say here. Certain criteria must be met or if they do not, they can take those into consideration.

Mr. PICKLE. I thank the Chairman.

AMENDMENT OFFERED BY MR. SAYLOR

Mr. SAYLOR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SAYLOR: On page 46, insert after line 25 the following:

"(f) Section 208(b) of such Act is amended to read as follows:

"'(b) The Secretary shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards for the control of emissions from new motor vehicles or new motor vehicle engines, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this Act.'"

Mr. SAYLOR. Mr. Chairman, first let me commend the committee for bringing this bill to the floor. The improvements that are contained in this bill in my opinion are excellent. But the amendment that I have offered I think is an amendment which is absolutely necessary if we are going to clear up the air pollution in this country.

The basic question is whether or not the Federal law is going to become the floor or the ceiling on air pollution.

Now, Mr. Chairman, the committee has already made one exception to the State of California. They say they have good reason for making that exception in the State of California. Very frankly, if you will read the record, you will find out that the same conditions that exist in California exist in every metropolitan area of the United States.

What my amendment, if adopted, would do is to say that if the States will establish standards which are higher than those of the Federal Government, it is perfectly proper for the Secretary to approve those standards.

Now, very frankly, while California has made out a good case, the industrial State of Pennsylvania from which I come has had more deaths due to air pollution than any other State in the Nation. Under the law at the present time we are bound by what the Federal standards are.

Mr. Chairman, the State of Pennsylvania is interested in increasing its standards. They are trying to see to it that the automobiles that are sold in Pennsylvania meet a higher standard than the Federal standard.

Now, I cannot see why, if this committee is really interested in cleaning up air pollution and not in trying to see that the Federal Government is the sole monitor or the sole agent to determine what is air pollution, that they would give other States who have these unusual problems the right to have higher standards.

Now, I did not put in this amendment the fact that the States could do it automatically. I have seen to it that this amendment is so drafted that they must confer with the Secretary and when they establish to his satisfaction that they

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have a condition which requires a greater standard, then they should be permitted to put those standards into effect. I think this is in the interest of good legislation.

Let me point out to you that the conditions in Alaska, which is one of our sister States, are not the same as they are in Massachusetts or Pennsyl-

vania or New Jersey or the highly industrialized States. New York has a problem with fog and smog that is just as bad as that condition which exists in California. California has made a great to-do about their condition because it is concentrated in one local area. But everyone of you who comes from a metropolitan area has this same problem.

Mr. Chairman, all I am seeking to accomplish through the adoption of this amendment is to say that if your States come in and show the Secretary that they have a problem, give the States the right to establish for the cars that are sold in their States a higher standard of emission than the general rule that the Federal Government has established.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to the gentleman from Texas.

Mr. ECKHARDT. Do I not understand that your amendment does not permit 50 different rules? As a matter of fact, it would only permit the number of rules suitable to the Secretary; would it not?

Mr. SAYLOR. That is correct; you would not have 50 unless they could give proof to the Secretary that would be adequate, but where there is a special situation and the Secretary is satisfied it is a special situation, and the State proves to him, then he could approve higher standards to be set up for that State.

Mr. ECKHARDT. So that there would be two guarantees against the rule being overly burdensome: One, the good judgment of the legislature of the State, which presumably would not enact legislation putting an extra burden on its citizens, and two, the judgment of the Secretary of Health, Education, and Welfare; is that correct?

Mr. SAYLOR. That is correct.

Mr. FARBSTEIN. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to the gentleman from New York.

Mr. FARBSTEIN. Am I to understand, then, that all that you seek is that the other States of the Union have the same right that the State of California has in setting standards that they deem necessary for the health and safety of their people?

Mr. SAYLOR. That is all that I am asking, and I ask that they go to the Secretary and make out their case just as California must go.

Mr. FARBSTEIN. Mr. Chairman, I believe that the amendment offered by the gentleman from Pennsylvania [Mr. SAYLOR] should be passed unanimously, because there is no reason that I can see why only California shall be permitted to set healthful standards for its citizens, and none of the others.

I thank the gentleman for yielding.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SPRINGER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the wording has been very carefully made in this amendment in order to try to get around the amendments which have been offered by several gentlemen that I know of over here who are planning to offer one which gives not only States but localities the right to set any standards they want.

The gentleman from Pennsylvania has offered an amendment with a slight modification—if they can convince the Secretary what the facts are.

Mr. Chairman, we made an exception. We thought we were sound. We did not try to make a lot of exceptions, because, Mr. Chairman, I think we have gone into this matter very carefully when we made the last survey that I know of, that was made by the Public Health Service, which showed

that the situation in one county, Los Angeles, in this country was 4.98 worse than any other city in the country. That is almost five times as much. We felt that the county of Los Angeles had made out a case, and we had to observe it.

There is not any other situation in this country that is even comparable to that in Los Angeles. Anyone who wants to make a study of this will find out that there is no other place where engine emissions from automobiles are anything like they are there. There is not any place in the country where the weather conditions are like they are in Los Angeles. It is merely one weather condition which, combined with all the other factors of engine emission, make up quite a dangerous situation. But if you had not had Los Angeles in this, California would not have gotten this exception. Any of you gentlemen who live in California and have gone to San Francisco know there certainly is no situation like that there. I have been in both places, and I do not have to be a stranger—all I have to do is walk around in the streets, or go over the freeways, to see that the situation is not the same. And that is the reason, because there is this one county of Los Angeles that we made the exception.

Mr. Chairman, we cannot, may I say, have 50 different standards, but it could be possible. The reason the gentleman has drawn this amendment the way he has is because he says it is only possible to do it, under his amendment, if you can convince the Secretary.

Let me just give you an illustration of what would actually happen if you wanted to give everybody this right to set up their own standards. There is nothing to prevent them from setting up their own standards and penalties where you could have 15 or 20 States which could prohibit the use of an automobile on the highways of that State unless you had a motor that conformed with the standards of that State. You cannot be any more ridiculous than that. And that is what you are getting into when you start letting every State in the Union set up its own standards. And that is exactly the problem that is involved in this.

I am not going to go into the expense problem. But some of you gentlemen surely can understand if you have an automobile manufacturer manufacturing 15 or 16 different engines at 15 or 16 different rates, depending on what the local body thought was necessary in its own particular situation, you can see what the problem would be.

I merely develop that point to give you some of the problems which we did not go into today but which we talked about in committee.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I yield to the gentleman.

Mr. ROGERS of Florida. I certainly concur with the gentleman.

As was pointed out, you just cannot drive from one State to the other if we permitted this type of thing, without everybody paying a fine or else having his car pulled off the road.

Second, we direct the Secretary that he shall set standards, and we want him to set the highest standards, the strictest standards, so that the people in Alaska are going to be protected just as much as anybody else. They ought to be and they will be under the committee bill.

I agree with the gentleman that this amendment definitely and any amendment like it, should be voted down.

Mr. SAYLOR. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I yield to the gentleman from Pennsylvania.

Mr. SAYLOR. I would just like to call to your attention that the only State that has had any deaths from air pollution is the State of Pennsylvania. You can talk all you want to about Los Angeles, but the only State that had any deaths from pollution coming from automobiles is the State of Pennsylvania in the town of Donora. This is a matter of record.

Mr. SPRINGER. I do not know about the situation altogether in Donora. But it was my understanding that there were other conditions than autos which had to do with the death in Donora.

If anybody has ever traveled through that town, as I used to, when I came from Illinois each time going back and forth—I can very well understand the situation because there was a great deal of pall hanging over that town which did not come from auto engine ignitions but came from the large factories all up and down that valley and that river.

Mr. SAYLOR. The reverse of that situation is essentially what you had in Los Angeles for which you made an exception. Carrying that argument to its conclusion, you would say that the other 49 States of the Union should not allow any car licensed in California to drive anywhere else because they have different standards than we have in the other States.

Mr. SPRINGER. It would not conflict because their standards are higher and they can just drive in the other States without fear of prosecution. I will say to the gentleman again, the only reason we made an exception for California was because of the situation being five times as bad as anywhere else in the country, in Los Angeles.

Mr. ECKHARDT. Mr. Chairman, I move to strike out the last word.

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Mr. Chairman, I had proposed to support a modified amendment that would have permitted States to make their own rules governing standards of automobile construction relating to emission of pollutants. But, frankly, I believe this is more guarded and it answers some of the objections that would be, or could be, presented to an amendment that permitted each State to make its own rules so long as the rule was stricter than the existing Federal law.

I think it answers the contention that there could be an inordinate number of rules that would make it too burdensome for a manufacturer to comply.

With that in mind, I would favor the approach here above those of such type that might be offered later.

Incidentally, I should like to point out to the House that if any of the other approaches did pass, at least it would arguably make the bill difficult to enforce. This does not do so. But I do want to be sure as to precisely what the amendment does, and I should like to ask the gentleman from Pennsylvania a few questions on the matter. First, do I understand that no standard can be established by any State unless the Secretary concurs?

Mr. SAYLOR. That is correct.

Mr. ECKHARDT. Second, do I correctly understand that the Secretary could not under this provision concur unless the standard adopted by the State was consistent with section 202(a) of this act?

Mr. SAYLOR. That is correct.

Mr. ECKHARDT. Do I also correctly understand that such a standard could not be adopted by a State unless it addressed itself to an

extraordinary condition in that State and constituted a stiffer rule than the Federal rule?

Mr. SAYLOR. That is correct.

Mr. FARBSTEIN. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New York.

Mr. FARBSTEIN. In connection with the statement about conditions in various States, I would just like to say for the record that right now there is an air pollution alert in New York City. The last time such an alert took place 175 people died. New York has asked people not to drive their cars because people are dying now. It would seem to me that the least we could do would be to amend the law so that the very minimum would be the standard set by California. I believe an amendment will be offered today to set the minimum standards as those of California in connection with antipollution.

Mr. ECKHARDT. Mr. Chairman, I support the amendment.

Mr. FARBSTEIN. I will go for that amendment.

Mr. MIKVA. Mr. Chairman, I rise in support of the amendment.

The CHAIRMAN. The gentleman from Illinois is recognized.

Mr. MIKVA. Mr. Chairman, originally I had intended to offer a separate amendment, which the distinguished gentleman from Illinois [Mr. SPRINGER] referred to. However, after hearing the amendment that has been offered and some of the discussion on it, I rise in support of this amendment. This amendment avoids some of the questions that have been raised about the proposal I was going to offer, and yet at the same time meets the very pressing problem which the committee did not address itself to, either in its report or in the bill itself, namely how do we meet the fact that whatever was true in 1967, as far as California was concerned, is true today in many of the urban areas of this country? The gentleman from Pennsylvania, the author of the amendment, referred to the fact that deaths have occurred in Pennsylvania. Deaths have occurred in Chicago; deaths have occurred in other big cities as a result of automobile pollution; because the fact of the matter is that you cannot separate out pollution caused by automobile emissions, from the other pollutants which as a total create the conditions under which there is real danger to the life and health of our population.

The Governor of my State, Governor Ogilvie, specifically addressed a letter to me, and I believe to the other members of the Illinois delegation, in which he strongly urged that a strong effort be made to repeal the preemption clause which exists in the 1967 act. Governor Ogilvie wrote:

STATE OF ILLINOIS,
OFFICE OF THE GOVERNOR,
Springfield, May 8, 1970.

Hon. ABNER MIKVA,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MIKVA: I should like to enlist your support for the repeal of a provision in the Federal Clean Air Act that unreasonably restricts state and local authority to regulate air pollution caused by motor vehicles.

Federal emission standards are a necessary minimum. But existing standards do not adequately control emissions even of carbon monoxide and hydrocarbons, much less of nitrogen oxides and other pollutants. Indeed, it is improbable that nationwide standards will ever be strict enough for our most congested areas since they are applicable to rural areas as well. Nevertheless, Congress in 1967 forbade the states to regulate emissions from new vehicles in response to the manufacturers' request for a single national standard.

An exemption from this pre-emption was provided only for California, which had demonstrated the existence of a special problem. Now, with the recent issuance of federal criteria for automotive air pollutants, it is clear that many other states may be confronted with the need to go beyond the federal standards in order to protect the public health and welfare. While federal law allows state regula-

tion of automobile use, it deprives the states of one of our most effective weapons—the control of emissions from new vehicles.

It would be unfortunate enough if federal law merely denied the states power to protect their own citizens. But the federal law is also internally inconsistent, for the preemption section is wholly incompatible with the simultaneous federal expectation that the states set and achieve air quality standards for automotive pollutants. Congress has told us we must develop automotive controls and at the same time has deprived us of the authority to do so.

A bill to amend the Clean Air Act will soon reach the floor of the House of Representatives, where an effort will be made to insert a provision repealing the pre-emption section in accord with bills introduced earlier in this session. I support this effort to restore to state and local governments the power to prevent pollution from motor vehicles, and I am writing each of the Nation's Governors and to the Illinois Congressional delegation to ask for expressions of support.

Sincerely,

RICHARD B. OGILVIE,
Governor.

An expression of support has come from many of the mayors of the large cities of this country. One such letter I have received is as follows:

NATIONAL LEAGUE OF CITIES,
U.S. CONFERENCE OF MAYORS,
Washington, D.C., April 29, 1970.

Hon. ABNER J. MIKVA,
U.S. House of Representatives,
Longworth House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MIKVA: The National League of Cities and U.S. Conference of Mayors support enactment of H.R. 16013 to repeal the present federal pre-emption of state and local motor vehicle emission standards which are more stringent than federal standards. We believe that there should be no federal pre-emption of any state or local regulations controlling air pollution which are stricter than federal requirements.

The National League of Cities National Municipal Policy for 1970 states in its section on air pollution: "States and local governments should not be precluded from adopting more restrictive standards than those adopted at the federal level."

Many local communities have air pollution problems which they believe to be more serious than generally appreciated at the federal level. These communities must be free to act positively to control air pollution to the extent they believe necessary for the health and well being of local citizens.

We commend you for your interest in this problem and look forward to working with you in support of H.R. 16013.

Sincerely,

ALAN BEALS,
Director, Congressional Relations.

Very simply, I say to the members of this committee that we have no way of meeting the problems unless there is some authority in State government to impose stricter standards on motor vehicles.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. In order that I may better understand the provisions of the amendment offered by the distinguished gentleman from Pennsylvania, I wonder whether or not the effect of his amendment would be to control the sale of vehicles alone or control the sale of vehicles and the use of vehicles? What I have in mind is a family that is leaving one State and going to 15 or 20 States in a car they bought in their home State. Is it the use of the vehicle or the purchase and use of the vehicle that your amendment is directed to?

Mr. MIKVA. I shall yield to the gentleman from Pennsylvania in a moment. First, I would like to say that as I read the present law—and I made a serious inquiry into the present provisions—used automobiles are not affected. The only provision relates to new automobiles. In answer to the gentleman's question, I would say that a State, such as the State of Illinois, can today, whether or not this

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amendment passes, tell you that you may not drive your automobile into Illinois unless you meet certain standards in regard to your vehicle. The restriction is on new vehicles.

I yield to the gentleman from Penn-

sylvania to answer the question more specifically.

Mr. SAYLOR. My amendment itself is directed merely to the sale of new automobiles and not to the transportation of automobiles.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. MIKVA. I yield to the gentleman from Florida [Mr. ROGERS].

Mr. ROGERS of Florida. Of course, this would give the Secretary a complete out from meeting his responsibilities. What we have directed him to do is set tough pollution standards. California was already into this before the Federal Government got into it. That was why they were granted this arrangement. Now the Federal Government is going to set strict standards, if the Secretary will do it. We will have a situation where the Secretary can say, "You will meet these strict standards." Instead, under this, he can say, "In New York, if you cannot meet it, you do not have to." I do not think we ought to give them that out. I oppose the amendment.

Mr. REES. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to address the Committee on this matter, because, when I was in the California State Senate, I wrote the present State legislation we have on automobile emissions. This was written with almost the unanimous opposition of the automobile manufacturers.

In California, to register a car, one has to have an approved device which has been approved by the Motor Vehicle Pollution Control Board. For example, as a Member of the U.S. Congress, and as a legal resident of the State of California, when I purchased a car here, I had to have a special order, because I could not register that car in California unless I had a certification that I had an approved air-pollution-control device that was approved by the State of California.

If I were not from the State of California, and I were traveling to the State of California, I could drive all through the State just as long as I did not become a resident and register my car there as a legal resident of the State of California.

If we approve this amendment, it does not mean we have to stop and leave the car at the New York, California, or Illinois border, but it means, if we wish to become residents of that State, we have to come up to the minimum health standards regarding automobile emissions.

We allow the States to develop minimum health standards. This is what we are talking about. We are not talking about automobiles. We are talking about health of human beings.

In 1955 when I was a freshman in the California State Legislature, I was chairman of a special subcommittee on health effects of air pollution. We were just beginning to develop information on emphysema, which is a lung disease. We did not know about emphysema. Now we find emphysema is becoming one of the major causes of death in the State of California. It is a lung disease, the inability of the lungs to function. Its probable cause is living in air polluted areas. We find the doctors, in southern California, are telling many families they had better move out of this smog basin and go some place where they will not have this concentration of pollutants.

Many people say pollution might not necessarily be caused by the automobile or maybe only a small contribution. In California we have very tough laws. We have basin type controls on stationary sources. In Los Angeles

we outlawed all open air burning and all open air incinerators about 15 years ago. We outlawed all industrial air pollutants quite a few years ago. We will not even allow the steam plants to build within the Los Angeles Basin. We have effective control on stationary pollutants, all stationary sources of pollutants, but still we have air pollution because of the last uncontrolled source, the motor vehicle, continues to pollute the atmosphere.

Detroit has not admitted this. They would not admit it 10 years ago or 5 years ago. They always say it is something else. In California we had to fight the automobile industry every foot of the way, because they say they are not responsible. I think they are. I think every State has the right to look at the health of the people of that State and to come up with minimum standards to fit that State. I think if we do not grant to the several States, as we have granted to California, this right, then we are going to have bare minimal standards dictated by States with minimal pollutants. I think to protect the health of our people we have to have maximum standards where States deem that they need maximum standards to protect the health of their citizens. I urge an aye vote on this amendment.

Mr. KOCH. Mr. Chairman, I move to strike the requisite number of words and rise in support of the amendment.

It is hard for me to understand why there would be any objection to voting for this amendment since it was brilliantly conceived. It does not impose these high standards on every area. It does not even give to every area the right to impose those standards for its own protection.

What it says is that the Secretary of Health, Education, and Welfare may, upon application, where the facts warrant it, permit an area to impose upon itself the standards that California now has.

It is hard for me to believe that the Members here would want to permit the residents of California and the Members who come from California to say, "Well, we in California saw the problem. We recognized it, and we are protecting our own constituency while the rest of the country is not protected."

It appears to me that the constituency in California should be protected and its Members should be commended for their foresight, and that we have an obligation to say, "Yes; if a like condition exists in the State of New York, or any other State, that application could be made to the Secretary of Health, Education, and Welfare, to grant the same prerogatives to such State that California has been granted."

I should like to say to the Members, as an example of our special problem in New York City that in the borough of Manhattan at times nearly 70 percent of the vehicles, during certain hours of the day, are taxis. They, with other vehicles, are the prime cause for the pollution in the borough of Manhattan.

Is it unreasonable to permit the State of New York, if upon application it establishes that the air pollution in the State is so bad that action needs to be taken and higher emission standards imposed? Is it unreasonable to say that the Secretary of Health, Education, and Welfare may hear such an application and if the Secretary of Health, Education, and Welfare finds after a hearing that our problem is equal to that of California that New York may take the same measures taken by California?

I should like to ask the distinguished gentleman from Florida [Mr.

ROGERS], if he is present—and if not, then the chairman of the committee—why, sir, is it not right to give to the Secretary of Health, Education, and Welfare the right to pass upon an application of an individual State which wishes to bring before him facts which would show that the problem existing in California exists elsewhere?

I see that both the gentlemen are present. Do they not have confidence in the Secretary that he would only make a finding permitting the change if in fact a like situation existed?

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. KOCH. I yield to the gentleman from Florida.

Mr. ROGERS of Florida. I hope the gentleman realizes what we are doing in this legislation now is tightening it up and saying to the Secretary, "We want you to have strict standards." They have already published standards the same as those in California for 1975. I am sure they are going to be tightened up in the interim years.

Mr. KOCH. May I ask the gentleman another question along the same line?

Mr. ROGERS of Florida. Certainly.

Mr. KOCH. If tomorrow, or upon the passage of this bill, the State of New York wanted to make an application to the Secretary, and if it were to establish that right now our problem in New York is the equal of that in California, is it the gentleman's judgment that we should wait until 1975 to deal with that problem?

Mr. ROGERS of Florida. I am sure the gentleman knows under present law the Secretary of Health, Education, and Welfare can move in any of these fields any time there is an imminent danger to health.

Mr. KOCH. I ask the gentleman again: Is it his judgment that if the State of New York were to make an application under the new law, the Secretary of Health, Education, and Welfare ought not to have the power to approve the stricter standards if the facts show that New York has the same kind of pollution as that which exists in California?

Mr. ROGERS of Florida. What I am

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saying to the gentleman is we want the Secretary to impose those strict standards all over the Nation. We give him this authority in the bill. I do not believe he should have the right to get out of it by saying, "I will let some State assume the burden."

The gentleman knows that many States will not even assume a burden.

Mr. KOCH. But, I say to the gentleman, assuming for a moment that the pollution standards are adequate for the State of Iowa, which perhaps does not have as many taxis and other vehicles as the State of New York, is the gentleman saying that New York shall not have that right in the interim and must wait until 1975 when the Secretary says, "These California standards shall apply to the whole United States"?

Is not the issue of States rights involved here?

Mr. ROGERS of Florida. What I am saying is if there is an imminent danger to New York, then the Secretary can act now under the authority of the law. He has that authority now.

Mr. MOSS. Mr. Chairman, I rise to support the amendment offered by the gentleman from Pennsylvania, and I do so after giving it a great deal of very careful thought.

I listened with interest to the comments of my colleague from California [Mr. REES]. I recall my service in the legislature of my State back

in 1949 when we passed some of the pioneering legislation dealing with the problems of air pollution. I realize fully how frustrated we would have been had we been confronted with Federal standards which were inadequate to meet the needs of California and the peculiarities of the Los Angeles basin. I recognize that there are other sections of this Nation having peculiarities—we live in one right here in the Washington metropolitan area—where the pollutants from motor vehicles frequently cause considerable personal discomfort. This is an area of intensive pollution. If the States can advance the technology to deal with this problem and can make a convincing show to the Secretary—and the language of the amendment is drafted so as to avoid any crazy "pattern of standards"— it is reasonably drafted—I assume the man occupying the office of the Secretary, whoever he might be, would give very, very careful consideration to any excessive economic impact upon what constitutes one of the basic industries of this Nation and not impose onerous or unreasonable burdens upon it. I think this is a reasonable request, and it is in the sense of the reasonableness of the request that I extend my support to it and urge the support of the members of the Committee.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MOSS. I am very pleased to yield to my friend, the distinguished gentleman from Texas.

Mr. ECKHARDT. Does the gentleman from California not agree with me that with respect to emission standards for new automobiles this act does preempt the field and requires a single standard everywhere except California?

Mr. MOSS. I think that it does. Yes, indeed.

Mr. ECKHARDT. The gentleman from Florida was indicating that special problems might be met by the Department of Health, Education, and Welfare in areas where that special problem existed in his answer to the gentleman from New York in the discussion with him, but as I understand the law as drafted, special problems may be met in every field except emissions from new automobiles. The provision referred to by the gentleman from Florida is found in section 108(k) but it is aimed at a contributor to the alleged pollution and provides for injunctions to stop the emission of contaminants. It is not directed at the manufacturer of a facility which may cause pollution. Is that not true?

Mr. MOSS. I think that is quite true.

Mr. ECKHARDT. And all we are attempting to do here is to provide a minimal relaxation of that preemption.

Mr. MOSS. I think it is the bare minimum that a State could reasonably expect to take care of problems peculiar to that State or to an area within that State.

I am very pleased to yield to my friend, the gentleman from Florida.

Mr. ROGERS of Florida. I thank the gentleman for yielding.

I want to clear this up. There is provision in the law that says whenever there is an imminent danger the Secretary may act.

Mr. MOSS. I think we are envisioning something here short of an imminent danger.

Mr. ROGERS of Florida. I say if it is all that serious, the Secretary may act.

Mr. MOSS. It would require moving so quickly and the danger would have to be of such magnitude that I think this would not deal with that problem. That contemplates an entire-

ly different problem. However, I think this is a reasonable request of the committee and of the Congress.

Mr. WILLIAMS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am in favor of national standards to be met by all States in fighting air pollution. But I think we have to recognize the fact that in more States than just California we do have special problems.

Just to set the record straight I have heard talk here today about having different types of engines and numerous types of gasoline in order to get away from the lead additive, a great air polluter, which is now placed in gasoline in order to get a higher octane rating.

Mr. Chairman, I want to tell the members of the committee that this is just not true. The additive which can be placed in gasoline and which can take the place of lead and which will burn in the process of combustion and not discharged into the atmosphere as a pollutant, are aromatic hydrocarbons that are a product of the cracking of crude oil.

If we say to every oil company in this country today, "We are going to give you 2 years to phase out the use of lead as an additive," we could do it and add an additional 1 cent a gallon to the cost of gasoline. The cost of putting lead in gasoline is 2 cents a gallon, approximately. The expense of aromatic hydrocarbon which has to be refined and added to the gasoline would be less than 3 cents a gallon and would produce the same high-octane gasoline.

Mr. Chairman, all this talk about $6 billion or $7 billion could be amortized at a cost of 1 cent a gallon.

So, we do not need a lot of different types of engines. But, we should give consideration to phasing out the diesel engine which is a great polluter.

However, Mr. Chairman, to get back to this specific amendment, you have to realize the fact that in a State like Pennsylvania we have numerous unusual conditions where other air pollutants emitted by automobiles and I have reference to industrial pollutants. For instance, in the city of Philadelphia, in the Greater Philadelphia area, we have a great concentration of refineries, an unbelievably large concentration of refineries. We have steel mills and every other type of industry. The vehicles that we are talking about in the States which would set higher standards would be applied only to those vehicles registered in that State.

You have already heard the distinguished gentleman from Pennsylvania [Mr. SAYLOR] talk about the deaths that occurred in one of our smaller cities and I can tell you that the concentration of steel mills around the city of Pittsburgh sets that city apart as much as any other city insofar as air pollution is concerned.

Mr. Chairman, we must take into consideration the fact that while we do support national standards, at the same time we have to recognize the possible adverse conditions which exist in some States and we must provide the legislation for dealing with those special cases. Therefore, I recommend the support of this amendment.

Mr. SAYLOR. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I am happy to yield to the gentleman from Pennsylvania.

Mr. SAYLOR. Mr. Chairman, I have heard our colleague, the gentleman from Florida [Mr. ROGERS], say that this bill has a provision to the effect that the Secretary has a right in the case of imminent danger to act.

Do the other 49 States have to wait until he acts while citizens are in danger of losing their lives, rather than giving the State legislatures the opportunity to act, or do they have to come down to the Secretary and ask for some relief? That is what the bill presently provides. Therefore, I would like to see this amendment adopted.

Mr. ROGERS of Florida. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Florida.

Mr. ROGERS of Florida. The gentleman knows that the bill—and it is already being done under present law—the Secretary is setting strict standards for automotive emissions. This is done because these automibiles are moving emission sources. In other words, they go from one State to another. That is why we are approaching it in this manner and not allowing one State to set a high standard and another not to do likewise.

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Mr. WILLIAMS. I understand the gentleman's statement, but I also understand that the national standards are not as high as your committee would like to have reported out at this time—not as high standards that you will probably be reporting out 5 or 6 years from now.

So that all I am saying to you is that we must realize that there are special conditions in States other than California that will require standards higher than the Federal standards at this time.

Mr. COLLIER. Mr. Chairman, will the gentleman yield for a question?

Mr. WILLIAMS. I yield to the gentleman from Illinois.

Mr. COLLIER. Mr. Chairman, I would ask the gentleman, do I understand that for years the States have had the authority to set the standards in their own States? Is there anything that prohibited all of the States from doing what California did?

Mr. WILLIAMS. I do not know that there was any.

Mr. COLLIER. Then, if there was not, why have they been silent all these years? Why is it that all of a sudden we find that the Federal Government is going to set standards? It just seems to me that somebody has been asleep at the switch.

Mr. WILLIAMS. The answer is that everybody has not been asleep at the switch and they have not been asleep at the State levels in certain instances.

The city of Philadelphia today has the highest anti-air pollution elimination standards in the country in all probability, as far as any municipality. Years ago the city of Pittsburgh adopted regulations and they cleaned up the atmosphere in Pittsburgh tremendously.

Mr. COLLIER. Will this lower the standards?

Mr. WILLIAMS. No, it will not.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Chairman, I would like to find out what time limit we can place on this amendment to close debate on it.

I believe we have been debating this one amendment for an hour, and I think that is sufficient time. I would just like to find out how much time would be required.

Does the gentleman from Michigan desire time?

Mr. DINGELL. Yes, I do.

MOTION OFFERED BY MR. STAGGERS

Mr. STAGGERS. Anyone else?

Mr. Chairman, I move that all debate on this amendment and all

amendments thereto close in 10 minutes.

The motion was agreed to.

Mr. DINGELL. Mr. Chairman, I rise in opposition to the amendment offered by my dear friend, the gentleman from Pennsylvania, and I move to strike the requisite number of words. As every one here knows, the author of this amendment is not only one of our most able, sincere, and valuable Members, but he is one of our Nation's truly great conservationists.

Mr. Chairman, I think the best argument against this amendment was made by one of its proponents and supporters, the gentleman from California [Mr. REES].

We have had a long fight to get uniform Federal standards on water quality and air quality. I was the author of the first legislation to create uniform Federal standards on water pollution. I was the first author of legislation to create Federal standards on air pollution, both on moving and stationary sources.

A few years ago on the floor of this House this body adopted a piece of legislation which set up a requirement that the Federal Government would have uniform Federal standards in all kinds of air pollution, moving and stationary. On the offering of my friends from California we adopted an exemption which permitted California, because of the supposedly unique circumstances there, to create local standards which would be stronger upon the showing of need. Now we have made great progress under the uniform Federal standards on moving sources, and many of my colleagues seem to think and seem to express the thought that we do not have strong Federal standards, and that we will not have strong Federal standards between now and 1975. Nothing is further from the truth. There is a very simple answer to this point that I think has to be brought out. The fact of the matter is that between now and 1975 the Federal Government is going to adopt exactly the same standards that will be adopted by the State of California on moving sources of pollution. If California is doing as well as its representatives say—then that is all that can possibly be done for any State.

I think that should make it quite plain that there is no desperate need to Balkanize this Nation and have to have 50 different assembly lines and 50 different designs of automobiles and 50 different kinds of automobile engines produced and marketed in this country.

I think it should be known that everyone in this country should understand that his Federal Government is not going to allow marketing of autos that do not meet the highest possible technological and economic standards that can be achieved for the prevention of air pollution. The law says that it should be thus, and the Congress and your committee will insist it be so.

Now it is assumed that California is unique. I am here to tell you that it is not unique. My friend, the gentleman from Pennsylvania, complains that they have air pollution problems in Pennsylvania. He is right. I am here to tell you we have air pollution problems in Michigan. I am here to tell you you have them in New York City.

I am satisfied that there is not a single metropolitan area that does not have grave air pollution problems. These problems are related to the meteorological conditions and are related to industrial emissions and are related to the number of automobiles and the concentration of people and to geographical factors.

This is precisely the reason why

we need strong high Federal standards. Not 50 different standards that are going to involve all of us in innumerable and immeasurable and everlasting disputes over what shall be the 50 different automotive air pollution abatement standards in this Nation.

I say that strong Federal standards are the only device under which we can have a meaningful cleanup and abatement of pollution from automobiles that is emitted into the atmosphere of the United States. Automobiles move from State to State, city to city, area to area. California, New York, Michigan, and Pennsylvania should know that the innumerable visiting autos meet the very highest and best standards.

I want to make one thing very clear. The proponents of this amendment would have you believe it is not possible for a State to challenge the Federal standards. This demonstrates the clear lack of knowledge of the standards on their part because before the standards can become promulgated, it must be done pursuant to a hearing where all viewpoints are heard. Each and every State can then come forward and stress both the problems which it has with regard to pollution and the need for a particular kind of device and relief to abate pollution which happens to afflict their people.

The Federal Government will be responsive to the wishes of the States for stronger and better standards, and we, the representatives of the people, will see that it be so.

There is further the opportunity of a judicial review of Federal standards if they are not strong enough and the States are fully qualified to speak on behalf of their people.

So anyone who has the idea that the Federal standards are not the approach is entirely in error, and I would urge the House to reject this amendment summarily.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois [Mr. SPRINGER].

Mr. SPRINGER. Mr. Chairman, I think this has been well debated. I think certainly everyone has made up his mind on the basis of the debate that we have had here.

The committee in 1967 considered this most carefully. We again considered it most carefully this year on the expiration of the 1967 act. We think we have made a broad improvement in five areas. We came to the conclusion that we simply could not leave this thing open to the possibility where you could have as many as 50 different standards.

There has been a lot of talk here today about what a State could or could not do. But if a State does get permission to set up its own standards upon, we will say, even a petition to the Secretary, they can include in their legislation and prevent any other automobile from being driven on the highways of that State, if that State wants to do it.

There are broad indications here that they would not do it. But that does not keep a State from doing it if it wants to do it.

This committee is faced with a very practical situation, gentlemen. We simply could not throw the door open to the possibility where you could have even as many as eight, 10, or 12 different engines out on the highway unless your consumers want to pay for that. That is

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exactly what you have to do in this instance if you allow that kind of standards to be created in so many States as I have indicated could possibly happen.

I think the committee has done a

good job in thinking and working this thing through this whole matter and every facet of what the gentleman from Pennsylvania is talking about has been debated.

Some of the members of the committee here have joined in the debate on both sides so that you have a picture of this. It means that we should vote against this kind of amendment and the vote against this kind of amendment was very strong in committee because we felt it simply was not practical to undertake this kind of amendment to leave the door open to what would happen and what I think the Members here think would happen and what could and is most likely to happen if we got the kind of pressures that have been indicated here on the floor might be put on the various States for the various problems that arise.

Putting all this aside, whatever has been said here, about my city being as bad as Los Angeles—it simply is not true because the Public Health Service has made a survey of all of these. There is not any place in the world, as I have indicated to you, except London, that is anywhere near as bad as Los Angeles.

Los Angeles is roughly five times as bad as any other city in this country. I am giving you a picture of why we allowed a relaxation in the case of the State of California. I felt that the State of California, upon the presentation they made, should have that relaxation. And if it had not been for the one county, which had 10 or 12 million people in it, which is Los Angeles County, they would not have gotten the exemption which they did. I felt that they were entitled to this kind of exemption by virtue of what the Public Health Service found there. The Public Health Service did not find any city in the country more than one-fifth as bad as the county of Los Angeles, and that is the reason that we allowed the exemption.

Mr. VAN DEERLIN. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. If I have any time remaining, I yield to the gentleman from California.

Mr. VAN DEERLIN. I would like to refresh the gentleman's memory. In the bill before the committee 3 years ago there was no exemption for California. It came to the floor and had to be fought out on the floor the same as this one has to be fought out. This amendment was not even offered in committee. This is a States rights amendment which seems to me every bit as valid as the one relating to California before.

Mr. SPRINGER. The subject was well debated in the committee. The whole issue of what should be done was discussed under almost exactly the same kind of amendment discussed by the gentleman from California, whether anyone actually offered the amendment or not. That I do not know. But I can say it was discussed from one end of the hearings to the other.

The CHAIRMAN. The Chair recognizes the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I yield to the gentleman from New York.

Mr. LOWENSTEIN. Mr. Chairman, I appreciate the gentleman's yielding. I merely wish to support the remarks of the gentleman from New York [Mr. KOCH].

Mr. STAGGERS. Mr. Chairman, we are here to legislate for the 50 States. That is our purpose. We are trying to present a strong, national clean air bill and not to split its provisions in different ways and let the States go their own ways, which the gentleman from Illinois spoke about.

Where were the States during all the years until 1965, and even after that when Federal legislation was passed in 1967, which was not strong enough? We realize that, and we have attempted to make it stronger. We expect the Secretary to make the automotive standards as strong or stronger than the California ones. We do not want it to stop with those standards. We want the best national standards which America can have. We want the best for the land. But we do not want to split these standards up 15 different ways.

What are the possibilities if we do not have strong national standards? I do not oppose the objectives of the amendment offered by the gentleman from Pennsylvania, but I think his amendment would result in exactly the opposite of what is intended. We would have weak Federal standards. We would in effect be saying, "Let the States do it."

You will abrogate your responsibility as a Congressman of the United States if you say, "Let us leave it to the States to do this." If you want uniform standards so that cars can travel out of one State and into all 50 States, as they do today, vote against the amendment. We ought to have a strong law. We ought to have the standards stronger than California has. We can say to the Secretary, "Let us have stringent standards." Let us not abdicate our responsibility. Let us defeat the amendment, pass a bill, and get it on the books.

Mr. NELSEN. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Minnesota.

Mr. NELSEN. I wish to join with our good chairman. I served on the subcommittee that sat through all the hearings, and I am in full agreement with the chairman. I hope the amendment is defeated and the bill is passed in its present form.

The CHAIRMAN. The time of the gentleman from West Virginia has expired. All time has expired.

The question is on the amendment offered by the gentleman from Pennsylvania [Mr. SAYLOR].

The question was taken; and on a division (demanded by Mr. SAYLOR), there were—ayes 49, noes 79.

Mr. VAN DEERLIN. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. SAYLOR and Mr. STAGGERS.

The Committee again divided, and the tellers reported that there were—ayes 50, noes 66.

So the amendment was rejected.

AMENDMENT OFFERED BY MR. TIERNAN

Mr. TIERNAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TIERNAN: Page 47, strike out line 12 and all that follows down through line 20 on page 49, and insert in lieu thereof the following.

"REGISTRATION AND REGULATION OF FUELS AND FUEL ADDITIVES

"SEC. 8. (a) Subsection (a) of section 210 of the Clean Air Act is amended to read as follows:

"'(a) The Secretary may by regulation designate any fuel or fuel additive, and after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or fuel additive may sell or deliver it unless the manufacturer of such fuel or fuel additive has provided the Secretary with the information required under subsection (c) of this section and unless such fuel or fuel additive has been registered with the Secretary in accordance with subsection (c) of this section.'

"(b) Section 210 of such Act is amended by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively, and by inserting after subsection (a) the following new subsection:

"(b) The Secretary may, on the basis of information obtained under subsection (c) of this section or any other information available to him, establish standards respecting the composition or the chemical or physical properties of any fuel or fuel additive to assure that such

fuel or fuel additive will not cause or contribute to emissions which would endanger the public health or welfare, or impair the performance of any emission control device or system which is in general use or likely to be in general use (on any motor vehicle or motor vehicle engine subject to this title) for the purpose of preventing or controlling motor vehicle emissions from such vehicle or engine. For the purpose of carrying out such standards the Secretary may prescribe regulations—

"(1) prohibiting the manufacture for sale, the sale, the offering for sale, or the delivery of any fuel or fuel additive; or

"(2) limiting the composition or chemical or physical properties, or imposing any conditions applicable to the use of, such fuel or fuel additive (including the maximum quantity of any fuel component or fuel additive that may be used or the manner of such use)."

"(c) Section 210(c) of such Act (as so redesignated by subsection (b) of this section) is amended—

"(1) by striking out 'For the purposes of this section the Secretary shall' and inserting in lieu thereof 'For the purpose of establishing standards under subsection (b), the Secretary may require the manufacturer of any fuel or fuel additive to furnish such information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or fuel additive or the effect of such use on the performance of any emission control device or system which is in general use or likely to be in general use (on any motor vehicle or motor vehicle engine subject to this Act) for the purpose of preventing or controlling motor vehicle emissions from such vehicle or engine. If the information so submitted establishes that toxic emissions or emissions of unknown or uncertain toxicity result from the use of the fuel or fuel additive, the Secretary may require the submission within a reasonable time of such scientific data as the Secretary may reasonably prescribe to enable him to

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determine the extent to which such emissions will adversely affect the public health or welfare. To the extent reasonably consistent with the purposes of this section, such requirements for submission of information with respect to any fuel additive shall not be imposed on the manufacturer of any such additive intended solely for use in a fuel only by the manufacturer thereof. Among other types of information, the Secretary shall';

"(2) by inserting in clause (2) 'the description of any analytical technique that can be used to detect and measure such additive in fuel,' after 'above,';

"(3) by striking out in such clause 'to the extent such information is available or becomes available,';

"(4) by striking out 'clauses (1) and (2)' in the second sentence and inserting in lieu thereof 'the provisions of this subsection'; and

"(5) by striking out 'such fuel additive' in such sentence and inserting in lieu thereof 'such fuel or fuel additive'.

"(d) Section 210(d) of such Act (as so redesignated by subsection (b) of this section) is amended—

"(1) by inserting after the first sentence the following new sentence: "The Secretary may disseminate any information obtained from reports or otherwise, which is not covered by section 1905 of title 18 of the United States Code and which will contribute to scientific or public understanding of the relationship between the chemical or physical properties of fuels or fuel additives and their contribution to the problem of air pollution.'; and

"(2) by striking out 'subsection (b)' in the first sentence and inserting in lieu thereof 'subsection (c)'.

"(e) Section 210(e) of such Act (as so redesignated by subsection (b) of this section) is amended (1) by inserting 'or subsection (b)' after 'subsection (a)'; and (2) by striking out '$1,000' and inserting in lieu thereof '$10,000'.

"(f) The amendment made by subsection (e)(2) of this section shall be effective with respect to any fuel or fuel additive to which a regulation issued under section 210(a) of such Act or a standard established under subsection (b) of such section (as amended by this Act) applies."

Mr. TIERNAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD. As I have already explained to the chairman, this amendment is a section of the administration bill which was presented to the committee and was not adopted by the committee. I believe it will save time for the committee if we consider it read.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. TIERNAN. Mr. Chairman and members of the committee, what I have attempted to do here today is to present to the committee for its consideration the language in the bill which was presented by the administration to the committee, because I

believe this is very important, and I believe it is necessary that we talk about the standards with respect to the fuels.

I commend the committee for its work on this bill because, as the chairman indicated, it is a step forward. I certainly agree with the chairman in a sense that it is something to improve the situation we have.

What my amendment will do is to go a little bit further, to be more stringent. It certainly will give the Secretary more power with regard to the type of fuels and additives that will be used in the future.

For example, it requires anyone who is using an additive to submit his findings and research data, which he has obtained, without making it necessary for the Secretary to undertake independent research.

Since the administration has put this forth in its bill, I believe we should support the administration in its efforts to curtail the pollutants that are put into the air.

The present bill now before us puts the burden on the automobile industry solely. It does not affect the manufacturer of the fuels used in the automobiles. I believe that the administration bill and the amendment I offer, which is the administration language, goes much further than the committee bill and it is necessary because of the situation we have here in America today.

We all know that the number of cars in our country today is increasing every year. Particularly those Members who come from large urban areas know of the situation which has certainly been exemplified by the situation in Los Angeles. In my own State, in all the urban areas, we have this problem. I know those who live in the cities know what it means to go into the city when it is rainy and a cloudy day, and there is heavy traffic downtown, not only with fuel being used in automobiles but also fuel being used for the heating and power of our great country.

I believe this is a time the Secretary should have made available to him through this amendment the information, the scientific data, which would be made available by the language under the administration bill.

Therefore, I believe we should not only require the automobile industry to meet this challenge, this grave challenge, which everyone recognizes here, but also the fuel industry. It is a question of balancing the needs of industry against the needs of our people.

I believe we have reached the point where we will look back, a few years from now, and say, "Why did we not do something about this five years ago?" This is the time to do something. The country needs it. This is the time for us to act.

I move the adoption of my amendment.

Mr. STAGGERS. Mr. Chairman, I rise in opposition to the amendment.

I shall take only a moment of the time of the committee, because the time is late. I hope we will not take too much time on these amendments.

Under the amendment offered by the gentleman from Rhode Island any Secretary, no matter who he is—and he might be changed; there has been a change recently—could take arbitrary actions. We think what is required by the bill is in accordance with our American way of doing things. I think the amendment ought to be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Rhode Island [Mr. TIERNAN].

The amendment was rejected.

AMENDMENT OFFERED BY MR. FARBSTEIN

Mr. FARBSTEIN. Mr. Chairman, I

offer an amendment, and I ask unanimous consent that reading of the amendment be waived and that I may explain it.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The amendment is as follows:

Page 46, insert after line 25 the following:

"(f) Section 202 of the Clean Air Act is amended by striking out in subsection (b) thereof 'prescribed under this section,' and inserting in lieu thereof "prescribed under subsection (a) of this section' and by adding at the end thereof the following:

"'(c)(1) The Secretary shall immediately commence the testing of motor vehicle engines propelled by any system other than the internal combustion engine which have emission characteristics superior to the internal combustion engine. On the basis of such tests, the Secretary shall, by regulation prescribe as soon as practicable, but not later than December 31, 1971 regulations for the control of automobile emissions which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons, and such standard shall apply to such vehicles or engines whether they are designed as complete systems or incorporate other devices to prevent or control such pollution.

"'(2) The regulations initially prescribed under this subsection shall be applicable (A) on and after January 1, 1975, to all new motor vehicles propelled by engines having 375 horsepower or more and to all new motor vehicle engines having 375 horsepower or more, (B) on and after January 1, 1976, to all such new vehicles and engines having 275 horsepower or more, (C) on and after January 1, 1977, to all such new vehicles and engines having 175 horsepower or more, and (D) on and after January 1, 1978, to all new motor vehicles and new motor vehicle engines. Amendments to any regulations prescribed under this subsection shall become effective on the effective date specified in the order promulgating such regulations which date shall be determined by the Secretary after consideration of the period reasonably necessary for industry compliance.'"

Mr. FARBSTEIN. Mr. Chairman, this is a very simple amendment. I will not take my 5 minutes.

Mr. STAGGERS. Mr. Chairman, will the gentleman yield to me?

Mr. FARBSTEIN. I yield to the gentleman.

Mr. STAGGERS. So we might get a time limit on that. I will wait until the gentleman gets through first.

Mr. FARBSTEIN. This is the same amendment I offered I think either last year or 2 years ago when the question of air pollution was the local issue in Los Angeles. At that time I said that the internal combustion engine ought to be banned by 1978. Of course, at that time it seemed as though it was an odd-ball amendment, but strange as it may seem, it has caught on. It has caught on in the sense that the people of this Nation realize that something has to be done about the pollution that is killing so many of our citizens.

What my amendment seeks to do is to ban the internal combustion engine in the sense that the amendment would set auto emission standards beginning in 1975 on the basis of the cleanest of the

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propulsion systems. Internal combustion engines which cannot meet the standards would be phased out first on the basis of their power on the following timetable: based on sales of 1969 American automobiles, the phaseout would have the following effects: the automobile engines with 375 horsepower would be outlawed in 1975. In other words, you have 5 years within which to use up an automobile that has a 375-horsepower engine. Less than 5 percent of the new-car sales had this horsepower, so there will not be very much of a loss. Second, in 1976, 275-horsepower engines will be outlawed. There you get 35 percent of your new-car sales. Third, in 1977, 175-horsepower engines will be outlawed, and all but 10 percent of the new-car sales are those. Then in 1978 there will no longer be permitted an internal combustion engine.

Mr. Chairman, I have ridden in and I know for a fact that there can be produced other engines which are equal to the internal combustion engine. I have ridden in a steam car out here 2 blocks away from where I am standing only a couple of months ago. I understand that a steam car can be built to cost no more than the automobile of a similar type that is mass produced today costing between $2,800 and $3,500.

We have to realize that the time has come when we must plan ahead in order that our people will be protected. It seems to me 8 years is time enough for the automobile industry to use its technology in a fashion that will no longer make necessary the internal combustion engine. I think they can do it. The only thing that is missing is the will and the fact that they have a large investment in the internal combustion engine.

Mr. VAN DEERLIN. Mr. Chairman, will the gentleman yield?

Mr. FARBSTEIN. I yield to the gentleman.

Mr. VAN DEERLIN. Mr. Chairman, the California Senate last year by a vote of 26 to 5 voted favorably on a bill which would have outlawed the internal combustion engine by the year 1975. That bill did not become law, but it reflected the sentiment of the people of California and the concern for what is happening through the use of an engine that cannot avoid emitting pollutants.

Mr. Chairman, I want the gentleman from New York to know that this was a branch of our State government what was not only a rather conservative body, but which had and still has a majority of Republicans.

Mr. FARBSTEIN. I thank the gentleman for his remarks.

Mr. Chairman, I know that the internal combustion engine is inherently deadly, dirty, and cannot be cleaned up. The only thing we can do to save the lives of our people is by adopting this amendment.

The amendment would establish automotive emission standards beginning with the 1975 model, based on what the cleanest feasible propulsion system can achieve.

The amendment is premised on the belief that the quality of the air should be determined on the basis of the best available technology, even if that means moving away from technology currently in general use.

The internal combustion engine is inherently a high polluting system. The theory of current antipollution technology is that add-on devices and mechanical adjustments in the engine can filter or catalytically remove the harmful pollutants produced by the internal combustion engine.

In the last 3 years the American public has spent a billion and a half dollars buying devices and mechanisms to control the internal combustion engine; and yet learned this year that up to 80 percent of those devices fail after only a few thousand miles of normal driving.

More importantly the quantity of automotive poisons entering our atmosphere is rising at a dramatic pace.

Most important of all, health, impairment of property and vegetative damage due to air pollution is on the climb. In my own city of New York death rates from emphysema have increased by over 500 percent in the last 10 years; deaths from chronic and acute bronchitis have increased by 300 percent; lung cancer and heart disease are at an all time high.

The last 3 years' experience indicates that the internal combustion engine is, by nature, dirty. Moreover, every auto expert not indentured to the auto industry agrees that the internal combustion engine could be cleaned up only at unacceptable costs

and then only up to the approximate level of the administration's proposed standards for 1975 models.

But with the increase in the number of automobiles on the highways, these standards will be sadly deficient by the end of this decade. The only really economically feasible method of cleaning up auto pollution once and for all is to ban the internal combustion engine or to insist that Detroit meet the rigorous standards of other nonconventional modes of propulsion.

I have personally driven in a sleek, modern, efficient, and fast steam car, employing the Rankin system.

I have also personally observed vehicles powered by gas turbine engines. Both the steam car and the gas turbine work, and work well. You have not only my word as to this but the word of governmental studies like the Morse panel, the Battelle Memorial Institute, the Senate Commerce Committee, and the California Assembly which confirm what I saw with my own eyes.

The question now is whether Detroit will abandon its present obsolete and environmentally destructive technology and give the American people the best that 20th century science and engineering can offer.

Mr. BELL of California. Mr. Chairman, I rise in favor of the amendment offered by the gentleman from New York.

My Los Angeles constituents' awareness of the dangers of automotive pollution—smog—is exceeded by none.

They suffer from it daily.

Thanks to the progressive action of local Los Angeles and California State government some years ago, pollution in our area caused by stationary sources has been virtually eliminated, as my good friend Congressman REES has said.

At the time these ordinances were enacted, many claimed that they were too drastic. Too unreasonable. That they would cause inordinate expense.

These naysayers were proved wrong and I am proud that residents of my area exercised the courage of their convictions.

Today we are considering an amendment against which the same charges will be leveled.

The health crisis caused by automotive pollution again demands so-called "drastic" measures.

This time, however, we cannot depend on local administrative remedies.

We are forced to turn to national policies to stimulate answers to what is increasingly a national problem.

Ninety percent of the smog in Los Angeles is caused by automotive pollutants.

Sixty percent of all smog in the Nation stems from the same source.

We have all been hopeful that the automobile industry would itself undertake to remedy the danger to health and life brought about by the products of the internal combustion engine.

And to some extent they are doing this, and for these efforts I commend them.

We are also aware, however, that there can be degrees of commitment. A commitment can be wholehearted, as in our successful moon landing, or it can halfheartedly limp along with too much rhetoric and too little action.

I am confident that some day, if we waited long enough, Detroit would inevitably build clean cars.

But can we afford to wait that long?

Is there not some way we can speed up the process, enhance the commitment? It is like Chairman STAGGERS has said: In quoting the late President Kennedy about a moon landing in this decade. He points up the same point inadvertently that I am making. Sometimes it is better to set

a goal and force the kind of action that will meet it.

We cannot legislate with the stroke of a pen an instant pollution-free engine. But we can legislate the commitment incentive that is presently lacking.

The pending amendment would do just that.

This amendment would provide us with a positive, rational approach to a critical problem.

It would not automatically outlaw the internal combustion engine.

On the contrary, it is possible that through fuel research and other technological developments the internal combustion engine can be made livable.

It is also possible, however, that the solution will lie in a new propulsion system such as a revised steam or turbine engine.

My constituents do not care what we call it, or how it works.

They do care that it will provide the transportation required in our society today while simultaneously sparing their environment and health the kind of devastation we are now witnessing.

Mr. Chairman, I am certainly aware

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that the urgency felt by the residents of Los Angeles and New York is not shared by those who are presently being spared the suffocating stench of smog.

They can argue that automotive pollution is not their problem.

But I call on my colleagues from such areas to contemplate the long-run inevitability that without action now, they, too, will ultimately have to face the same problems.

If we can cooperate today, we can ensure early relief for citizens such as I represent, while guaranteeing that those not now burdened by dangerous pollution need never fear it.

There is no need to wait another 10 or 15 years.

We can act now by approving the pending amendment and I strongly urge that we do so.

Mr. STAGGERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I would like at this time to see if we could arrive at a time limitation on the consideration of this bill because some Members of this body have other obligations. Therefore, I wonder if we could reach a decision to vote on this amendment and all other amendments to the bill by 6:30 p.m.? I do not feel that that would be cutting off unduly the time of anyone. I would like to do this in order to get the bill passed this evening.

Therefore, Mr. Chairman, I ask unanimous consent that we vote on this amendment and all other amendments thereto and vote on the bill at 6:30.

The CHAIRMAN. The gentleman's request is that debate on all amendments close at 6:30?

Mr. STAGGERS. That is right; and vote on the bill.

Therefore, Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments to the bill conclude at 6:30.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I will only take one-half minute of that time right now.

Mr. Chairman, I rise in opposition to the amendment just proposed to

the House for the reason that this just is not possible. It is not a feasible amendment to say that we are going to do this at a certain time. The experts say we can have a clean internal combustion engine and we expect to hold them to their statements. We can take another look at this when this law comes again before Congress 3 years from now. If progress has not been made by that time, we can take the necessary action which will be required.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. FARBSTEIN].

The amendment was rejected.

AMENDMENT OFFERED BY MR. KLEPPE

Mr. KLEPPE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KLEPPE: On page 49, line 10, strike out the quotation mark.

Page 49, insert after line 10 the following:

"(i) The Secretary is authorized to conduct as soon as practicable a full investigtaion and study (including, if appropriate, a pilot or demonstration project) respecting the feasibility of combining gasoline with alcohol made from grain, in order to produce a cleaner burning motor vehicle fuel, thereby reducing both air pollution and grain surpluses."

Mr. STAGGERS. Mr. Chairman, I reserve a point of order against the amendment offered by the gentleman from North Dakota [Mr. KLEPPE], but I will not raise the point of order until the gentleman has spoken and has given his views.

The CHAIRMAN. The gentleman from West Virginia reserves a point of order on the amendment.

Mr. KLEPPE. Mr. Chairman, I want to take a very brief moment to discuss this amendment. We have been talking about fuels all afternoon in this debate, and this amendment deals with fuels also. There is nothing new about this proposal. It is very self-explanatory. It is something that has been under consideration for many years. As a matter of fact, during the Eisenhower administration there was a congressional commission appointed to study this question, and the only reason nothing was done was because of the cost involved.

To make alcohol out of grain and to blend it with gasoline to reduce pollution in the air from automobiles is something that works, but it is more costly than to make alcohol from ethylene, which is a petroleum product.

The point I want to make, Mr. Chairman, is that there are some offsetting costs involved when you use grain as a raw material. The offsetting costs are that we have a surplus of grain today, and we could reduce the cost to the taxpayers and our Federal Government if we would utilize more grain to make alcohol to blend with the gasoline.

Mr. STAGGERS. Mr. Chairman, will the gentlemen yield?

Mr. KLEPPE. Mr. Chairman, I yield to the gentleman from West Virginia.

Mr. STAGGERS. Mr. Chairman, I agree with the objectives of the amendment offered by my colleague, the gentleman from North Dakota. I wish to say that the Secretary already has the needed authority—I will not take time to read the language—but it is under section 104, subsections 1 and 3 of that, that gives him the authority already. We will urge the Secretary to proceed along these lines. I think it is a worthy objective, and that he should be doing this kind of research.

Mr. KLEPPE. Mr. Chairman, I thank the gentleman for his comments.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. KLEPPE. I am happy to yield to the gentleman from Illinois.

Mr. SPRINGER. Mr. Chairman, may I say that I want to commend the gentleman from North Dakota [Mr. KLEPPE], for his excellence in the pursuit of this subject of making alcohol from grain to blend with gasoline.

I too recall—because I was here during the Eisenhower administration—when this commission to study this matter was set up. Again I want to commend the gentleman for bringing this matter to the attention of the committee, and I certainly wish to assume the gentleman that we will do all that we can to assure that this very important subject which the gentleman has raised will be studied.

Mr. SEBELIUS. Mr. Chairman, will the gentleman yield?

Mr. KLEPPE. I yield to the gentleman from Kansas.

Mr. SEBELIUS. Mr. Chairman, I thank the gentleman for yielding, and I would like to associate myself with the remarks made by the gentleman from North Dakota.

Mr. Chairman, this legislation to amend the Clean Air Act would be a positive step by Congress to protect the quality of our environment.

H.R. 17255 would extend the duration of this act, provide for national standards of air quality, expedite enforcement of air pollution control standards, authorize regulation of fuels and fuel additives, provide for improved controls over motor vehicle emissions and establish standards for dangerous emission from stationary sources.

Regarding this obviously needed legislation, I am particularly interested in the amendment introduced by my good friend and colleague, the Honorable TOM KLEPPE, from North Dakota. The gentleman from North Dakota's amendment would provide for an urgently needed study and pilot program in the use of grain alcohol as an additive to gasoline to eliminate tetraethyl lead pollution of the atmosphere.

For some time now, it has become obvious air pollution from tetraethyl lead now used in gasoline as an antiknock additive is a most serious pollution problem. Leading scientists across the Nation have warned of the serious dangers from possible lead poisoning. There is reason to believe this proposed pilot study could provide us with a reasonable answer to this problem through the use of grain alcohol.

Using grain alcohol as a substitute for lead would have many obvious side benefits. Not only could we reduce dangerous pollution, but we could provide a tremendous grain market and thereby reduce the farm surplus and the farm program cost. We could also provide a high protein grain residue for low-cost health food and livestock needs as well. The social impact of this research has far-reaching implications.

Since the cost feasibility of this proposal has been questioned, I feel a full investigation and study, including a pilot or demonstration project in the wheat belt, should be implemented as soon as possible.

Mr. KLEPPE. Mr. Chairman, with the assurances of the gentleman from West Virginia [Mr. STAGGERS], I ask unanimous consent that I may be permitted to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from North Dakota?

There was no objection.

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Mr. MELCHER. Mr. Chairman,

will the gentleman yield?

Mr. KLEPPE. I yield to the gentleman from Montana.

Mr. MELCHER. Mr. Chairman, I want to commend the gentleman from North Dakota for his very fine explanation of the possibilities of the utilization of our grain resources, and I want to join with the gentleman in his efforts. Not only would this help control pollution but also promote a broad market for grains.

Mr. KLEPPE. I thank the gentleman.

AMENDMENT OFFERED BY MR. HECHLER OF WEST VIRGINIA

Mr. HECHLER of West Virginia. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HECHLER of West Virginia: on page 54, line 12, strike out $75,000,000 and insert $750,000,000; on page 54, line 13, strike out $100,000,000 and insert $1,000,000,000."

On page 54, line 14, strike out "$125,000,000" and insert $1,250,000,000".

On page 54, lines 18 and 19, strike out "$125,000,000" and insert "$1,250,000,000".

On page 54, lines 19 and 20, strike out "$150,000,000" and insert "$1,500,000,000".

On page 54, line 21, strike out "$200,000,000" and insert "$2,000,000,000".

The CHAIRMAN. The gentleman from West Virginia (Mr. HECHLER) is recognized for 2 minutes.

Mr. HECHLER of West Virginia. Mr. Chairman, the current legislation that we are considering authorizes only a total of $200 million in the fiscal year 1971. My amendment would enable the expenditure of ten times that amount and ten times the amounts authorized for subsequent fiscal years.

What will $200 million buy? I have checked with the Department of Defense and find that $200 million will buy one, only one Poseidon nuclear submarine now under construction. Is not human life on this planet worth more than one nuclear submarine? Air pollution threatens the very existence of human life on this planet.

How many Members on the floor if faced with the choice in 1961 of whether they would prefer to invest $30 billion to go to the moon or to make life livable for human beings on this planet by eliminating air pollution, would not have chosen to eliminate air pollution? We have the chance to eliminate air pollution if we have the will to undertake it.

We have the opportunity to make a bold stroke to achieve a genuine cleaning up of the air. Air pollution is costing the American public conservatively $11 billion, and more probably $15 billion a year. This does not include the impairment to health and medical payments and loss of productivity or damage to architectural buildings. I see by the evening paper that the Lincoln Memorial is threatened by air pollution. Our forests are threatened by air pollution. Our crops are threatened. But more important, human beings and their health are seriously threatened.

Here is an opportunity for the Congress to authorize sufficient funds to solve the problem. These funds will be expended, I am assured by S. Smith Griswold, former director of the National Air Pollution Control Administration, for the purpose of strengthening the State agencies which have the primary responsibility under the new legislation.

The States and not the regions will be the entities which will enforce the Secretary's standards. The Secretary will promulgate ambient air standards. Ambient air standards are used under the Air Quality Act of 1967 and the problem has been that the States where regions have been designated very often do not have the manpower or ability to come up with implemen-

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tation plans. In other words, they do not know how to translate ambient air standards into emission standards. The inadequately staffed, inadequately equipped State air pollution control programs do not have the resources to evaluate their air pollution problems nor the means to resolve these problems. Increased funding is not always the answer, but in this case adequate Federal support is sorely needed to beef up the State programs.

I would say that less than 10 States out of the 50 have adequate pollution control agencies today, and even these are hard pressed for adequate financial support.

While I am talking about this question of State responsibility under the pending proposed legislation, I would like to point out that the legislation we are considering does not provide any authority for the Secretary of Health, Education, and Welfare to establish a maximum period within which each State must meet the national air quality standards. The bill does not authorize HEW to enforce the national standard or the plan except where the State fails "to take responsible action to enforce the plan." It is absolutely unclear what "reasonable action" means.

Additional financing might not prevent these long, drawn-out delays, and I am pleased that the authors feels that the injunctive process can help. Yet the Secretary of Health, Education, and Welfare will only be able to enjoin those who emit pollutants for which standards and a plan has been developed.

I am disturbed that the Secretary cannot issue standards until criteria reports have been published. The NAPCA has identified between 30 and 50 pollutants, but has only published criteria for five since 1967. A crash program, utilizing the additional funds which I would authorize through my amendment, would enable the publication of criteria for these additional pollutants, as well as development of the technology to abate this pollution.

We really ought to directly control emissions from larger plants by setting national emission control levels, not ambient levels, and let the States in the first instance try to enforce Federal emission standards. If this does not work out in a particular State, then the Secretary can move much more quickly than he would under the proposed legislation. If emission controls are set for a new facility, we really ought not to discriminate, but should set them for all facilities above a certain size.

Another aspect of this proposed bill which disturbs me are the clauses contained on pages 33 and 36 which relate to technological and economic feasibility. For example, page 33 of the bill refers to a suit in the U.S. district court by the Attorney General to secure abatement of the pollution. There follows this sentence:

> The court, giving due consideration to the practicability and to the technological and economic feasibility of complying with provisions of the plan established to implement such standards, shall have jurisdiction to enter such judgment and orders enforcing such judgment as the public interest and equities may require.

And on page 36, the bill states:

> The Secretary shall from time to time by regulation, giving appropriate consideration to technological and economic feasibility, establish standards with respect to such emissions.

Now I do not understand why these phrases are necessary. Obviously the Secretary will take such factors into consideration where necessary, but keeping uppermost the public interest. To write these phrases into legislation emphasizes their importance above and beyond the public interest. I doubt whether Columbus would have succeeded had Queen Isabella stressed

practicability, technological, and economic feasibility. Certainly it was not technologically or otherwise feasible to go to the moon in 1961. If Jefferson had placed these factors uppermost he never would have allowed Lewis and Clark to embark on their expedition. We have long since passed the point where we should allow polluters to plead that their economic interests are being threatened by having clean air. I believe the following letter puts the issue of economics into a little clearer perspective:

PRATT, W. VA.,
April 30, 1970.

Hon. KEN HECHLER,
House of Representatives,
Washington, D.C.

DEAR SIR: The residents of the Upper Kanawha Valley are facing the problem of air pollution, which in the Montgomery, West Virginia, area, has assumed absurd proportions.

There are several reasons why I say this. First is the obvious financial burden it places on home owners in the area. It is necessary to repaint at least every other year due to the large quantities of grit, spot and flyash forever present in the air. Second, there is the mental and spiritual depression brought on by the continuous, ever increasing blanket of smog which covers our beautiful mountains and threatens to obliterate the sun. Finally and most important, is the effects of this blanket of gloom on the health of the citizen victims who must live and work in the area. It is a rare person, indeed, who does not suffer sinus and bronchial irritations from breathing this stinking, malodorous air. After all, we haven't much choice but to breathe this so-called air, have we?

The source of these abysmal conditions? The Union Carbide Metals plant at Alloy, West Virginia.

According to the public relations department of Union Carbide, it will be at least five or six more years before we are allowed to breathe in safety. I find this six year estimate hard to believe, though; since, for the past 35-years, Union Carbide has been promising that "within five or six years" they will have the problem solved. I have begun to get the impression that by "solving the problem" they mean to wipe out the entire

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population of the Montgomery area, and by doing so will have no need to curb their destruction of nature.

In fact, Union Carbide seems to have very little concern for its employees either. Among the employees with whom I am acquainted, my father included, not one is entirely free from emphysema, bronchitis, and other respiratory diseases. I think their plight is similar to the coal miners who are victims of "black-lung."

The reason nothing has been done about these toxic conditions eludes me. There is no valid excuse which can be offered by Union Carbide; they are financially as well as technically capable of putting an end to the health hazard of air pollution around Montgomery. I sincerely feel and hope that something can be done to force Union Carbide to stop the pollution. The citizens of the Upper Kanawha Valley put their lives in your capable hands, Mr. Hechler.

Very truly yours,

EDGAR F. SCALES, Jr.

We have made some bold decisions in this Congress to increase the recommendation of a paltry $214 million in the President's budget for waste treatment plants and water pollution control to $1 billion. I therefore feel that we should take similar action in the area of air pollution control, and initiate a meaningful program such as outlined in my amendment.

Right now we are losing the battle to control air pollution.

The air is getting dirtier and dirtier.

The high-sounding titles of the two basic pieces of legislation which Congress has passed: the "Clean Air Act" of 1963 and the "Air Quality Act" of 1967 have not lived up to their titles.

The Nation is far ahead of the Congress in demanding clean air, and tough regulations with teeth in them to enforce the law.

Now we have a chance to move forward boldly and launch an all-out fight against air pollution. I hope that my amendment will receive support. For the future of the human race, we can afford to spend more than the cost of one nuclear submarine to preserve human life on the planet earth.

The CHAIRMAN. The question is on the amendment offered by the

gentleman from West Virginia (Mr. HECHLER).

The amendment was rejected.

AMENDMENT OFFERED BY MR. BUTTON

Mr. BUTTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BUTTON: Page 46, insert after line 25 the following:

"(f) Title II of the Clean Air Act is amended by inserting after section 212 the following new section:

" 'STATUTORY STANDARDS

" 'SEC. 213. (a) Notwithstanding any other provision of this title, the maximum level of emission from any new motor vehicle or new motor vehicle engine, expressed in grams per mile, with respect to reactive hydrocarbons, carbon monoxide, and oxides of nitrogen shall be as follows: Reactive hydrocarbons—2.2 for 1971, 1.5 for 1972, 1973 and 1974; carbon monoxide—23.0 for 1971 through 1974; oxides of nitrogen—4.0 for 1971, 3.0 for 1972 and 1973, and 1.3 for 1974. For the years after 1974, such levels shall be determined by the Secretary in accordance with this title but such levels shall not exceed those established herein for 1974.

" '(b) Nothing in this section shall be construed to prohibit the Secretary from establishing for any year with respect to reactive hydrocarbons, carbon monoxide, and oxides of nitrogen, emission standards establishing lower levels of emission than those provided in this section.' "

The CHAIRMAN. The gentleman from New York (Mr. BUTTON) is recognized for 2 minutes.

Mr. BUTTON. Mr. Chairman, this amendment seeks the same goals as the amendment proposed by the gentleman from Pennsylvania (Mr. SAYLOR but it uses a different avenue.

I believe it meets the objections of the gentleman from Michigan (Mr. DINGELL) and some of the others who feel that there should not be a patchwork of different regulations among the States.

This would move up by 5 years the period of time when there would be standards set nationwide—and move it up from 1975.

The Federal standards under the provisions of this bill will match those projected for California by 1975 but meanwhile the rest of the Nation must suffer from inadequate control standards.

This amendment will begin the process of cleaning up the air 5 years earlier, which time has been lost and we cannot afford to lose much more time.

Mr. Chairman, I move the adoption of the amendment.

Mr. GUDE. Mr. Chairman, I rise in support of the gentleman from New York's amendment and commend him for his concern with reducing the harm from the principal source of air pollution, the internal combustion engine. Although this bill, H.R. 17255, as reported from committee, will substantially strengthen our efforts to curb air pollution, it was weakened in committee from the administration's initial recommendations to alleviate pollution from the automobile.

The Public Health Service states that the automobile is responsible for 60 percent of all air pollution in the United States and is costing Americans $30 billion annually. Here in the Washington metropolitan area we have a particular problem with the automobile. It is astonishing to note that the 61 square miles that the District encloses has the highest auto density in the entire country, and traffic is constantly increasing. This year the District is approaching 5,000 cars per square mile. Therefore, to the extent in fighting air pollution nationally and in the Washington metropolitan area, we note that automobiles are a prime target.

Our goal must be the attainment of pollutant free vehicles as a complete substitute for our present types in the shortest period of time. We

must not flag in our efforts to achieve this end. The diseases scientists associate with air pollution are definitely on the upswing. Emphysema, for example, an ailment which permanently destroys sections of the lung, had a rate in 1950 of less than two deaths per 100,000 while in 1966 the rate increased to more than 12 deaths per 100,000.

Although it is difficult to pinpoint a specific pollutant as causing a specific disease, scientists assure us that we can not only look for a decrease in emphysema but also for a real improvement in man's general health and welfare with the removal of all filth from the air regardless of its origin.

Therefore, while we are making some progress against air pollution in Washington—we have had a 46-percent reduction in oxides of sulfur and a cessation of most open burning—we must in no way slacken our efforts. For this reason I urge the adoption of this amendment as well as the other amendments which are being offered which would restore the requirements of H.R. 17255 to the more stringent levels recommended by the administration.

Mr. STAGGERS. Mr. Chairman, I rise in opposition to the amendment. I think it unwise at this time to legislate in this way. The subcommittee and the full committee considered these and all other approaches. We hope we can do much better than the standards that would be set by the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. BUTTON).

The amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. RYAN).

(By unanimous consent, Mr. KOCH yielded his time to Mr. RYAN.)

AMENDMENT OFFERED BY MR. RYAN

Mr. RYAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RYAN: On page 36, line 4, strike out "and economic feasibility" and on page 37, line 3 and 4, strike out "and economic feasibility".

Mr. RYAN. Mr. Chairman, the purpose of the amendment is to strike from the new section 112, which empowers the Secretary to establish Federal emission standards for new stationary sources, the requirement that the Secretary give appropriate consideration to the economic feasibility of proposed emission standards. In both section 112(a) on page 36 and section 112(b)(2) on page 37 the bill refers to "economic feasibility." I believe that the threat to our environment is so great that, as a matter of public policy, industry should be required to use the most advanced technology regardless of whether or not a particular industry finds it economically feasible. I fear that the language of the bill as presently written, will encourage industry to say, "This will cost too much and we can't do it." The only way to achieve clean air is to set the standards and require compliance.

For example, in New York City, before the city of New York required Consolidated Edison to reduce the sulfur content of its fuel, the utility said it was simply impossible, that it would cost too much. But when faced with a deadline, it not only met the standard but did so a year sooner than required. It did cut down the sulfur content of its fuel. Although the cost was some $15 million a year, when prorated among all the users, it came out to something like 14 cents a month for the average residential user of electricity.

I do not think the Secretary should be

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put in the position of determining economic feasibility. Experience shows that industry will not reveal its cost figures to him. Similar provisions have been adopted in various State laws, and State control agencies have time and again run into difficulty because they cannot obtain the cost factors and other information. Then they wind up in court litigating the question of economic feasibility.

The task of the Secretary should be to set standards strict enough to control and eliminate air pollution. His hands should not be tied.

I urge support for this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. RYAN).

The amendment was rejected.

AMENDMENT OFFERED BY MR. RYAN

Mr. RYAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. RYAN: On page 36, lines 1 and 2, strike out "substantially to endangerment of the public health or welfare" and insert in lieu thereof "to the deterioration of the quality of environment".

Mr. RYAN. Mr. Chairman and members of the Committee, this amendment also applies to the new section 112, which make possible Federal emission standards for new stationary sources. Under the provision as proposed by the committee, the source must contribute "substantially to the endangerment of the public health or welfare." My proposed substitute language would require that the source contribute "to the deterioration of the quality of the environment."

I think this is a very important distinction. Our concern should be whether or not the pollutant, which is to be controlled, does, in fact, affect and cause deterioration of the environment. To impose on the Secretary the burden of determining whether pollutants endanger public health and welfare reverses the place where the burden should be. The burden should be upon the polluter to establish that he does not contribute to the deterioration of the environment.

The test for setting standards should be environmental deterioration.

Section 112(b)(1) imposes an "extremely hazardous to health test" for an absolute prohibition on construction and operation. That restriction should be more than sufficient in terms of requiring a health danger. If we are to achieve clean air and save our environment, then we must not unduly restrict the Secretary.

I urge support for this amendment.

Mr. STAGGERS. Mr. Chairman, I rise in opposition to the amendment. I might say this is taken care of in the State plans and certainly it is not needed in this bill. The amendment should be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. RYAN).

The amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. VAN DEERLIN).

Mr. VAN DEERLIN. Mr. Chairman, the committee has been most patient. I am happy to yield back the balance of my time.

The CHAIRMAN. The Chair recognizes the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS of Florida. Mr. Chairman, I urge the passage of this

bill. It will clean up the air in America.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. DINGELL).

(By unanimous consent, Mr. DINGELL yielded his time to Mr. STAGGERS.)

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, I ask unanimous consent to yield my time to the distinguished chairman of the full committee.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. ROSENTHAL. Mr. Chairman, reserving the right to object, there has been a serious time limitation. I had no amendment to offer, but many others have been precluded from offering an amendment by the serious time limitation. Is there some special reason why the gentleman wants to yield the additional time to the chairman of the committee?

Further reserving the right to object, Mr. Chairman, are there any other members of the committee who plan to engage in this same type of operation?

I object, Mr. Chairman.

The CHAIRMAN. Objection is heard.

Mr. ECKHARDT. Mr. Chairman, I wish to use my time.

Mr. Chairman, I merely would offer my time to anybody who had something to say and who could say it in that period of time, so it is really up for grabs, except that I was quite sure the chairman could use it.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. SPRINGER).

Mr. SPRINGER. Mr. Chairman, I think this bill has been well stated. I think everybody has had his say on it, and in view of the way in which it has been received, I hope this bill will pass.

The CHAIRMAN. The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS), the chairman of the committee.

Mr. STAGGERS. Mr. Chairman, I am not going to take the full 4 minutes. I do appreciate the courtesy of my colleagues in yielding time to me.

What I have to say I can make very brief.

I want to compliment the Committee for the way they have conducted themselves in talking about and arguing over this bill.

This is a bill with which I am sure none of us fully agrees, but we have come out with a strong bill. The subcommittee presented a strong bill which the Members thought was for the best interest of our Nation. The full committee concurred in that and has brought it to the floor. We believe it is a strong bill. We believe it is one that will help curb this environmental danger we have.

This is a problem we will be taking a look at again 3 years from now.

I commend the bill to the House for passage.

AMENDMENT OFFERED BY MR. STAGGERS

Before we close debate, Mr. Chairman, I offer an amendment which I believe is concurred in by the committee.

The Clerk read as follows:

Amendment offered by Mr. STAGGERS: Page 35, line 15, insert after the period the following: "The amendments made by this section shall not be construed as repealing or modifying the powers of the Secretary with respect to any conference convened under section 108(d) of such Act before the date of this Act."

Mr. STAGGERS. Mr. Chairman, I

do not desire to discuss the amendment.

Mr. SPRINGER. Mr. Chairman, we have no objection to the amendment on this side.

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The amendment was agreed to.

Mr. STAGGERS. Mr. Chairman, before the Committee rises, I do want to compliment the subcommittee. The members did work long and hard, for many hours, to bring us this bill to the full committee and the House.

I thank the gentleman from Illinois, the ranking minority member of the committee, the gentleman from Illinois (Mr. SPRINGER) and all who serve on the committee for their cooperation. They have done a grand job. And I believe we have brought a good bill to the floor for the good of the country.

The CHAIRMAN. Are there any further amendments to be proposed? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee substitute amendment, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. ALBERT) having assumed the chair, Mr. GALLAGHER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill—H.R. 17255—to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air, pursuant to House Resolution 1069, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment in the nature of a substitute? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CUNNINGHAM

Mr. CUNNINGHAM. Mr. Speaker, I offer a motion to recommit.

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The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CUNNINGHAM. In its present form, Mr. Speaker, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CUNNINGHAM moves to recommit the bill H.R. 17255 to the Committee on Interstate and Foreign Commerce.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SPRINGER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The question was taken; and there were—yeas 375, nays 1, not voting 53, * * *.

* * * * *

So the bill was passed.

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1.1k(4)(b) Sept. 21, 22: Considered and passed Senate amended, pp. 32837; 32900–32928; 33072–33121

AMENDMENT OF CLEAN AIR ACT—AMENDMENT

AMENDMENT NO. 926

Mr. BAKER (for himself and Mr. COOPER) proposed an amendment to the bill (S. 4358) to amend the Clean Air Act, and for other purposes, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 927

Mr. MANSFIELD (for Mr. MAGNUSON) submitted an amendment, intended to be proposed by Mr. MAGNUSON, to Senate bill 4358, supra, which was ordered to lie on the table and to be printed.

AMENDMENT NO. 928

Mr. DOLE submitted an amendment, intended to be proposed by him, to Senate bill 4358, supra, which was ordered to lie on the table and to be printed.

(The remarks of Mr. DOLE when he submitted the amendment appear later in the RECORD under the appropriate heading.)

AMENDMENT NO. 930

Mr. COOPER (for himself and Mr. BAKER) submitted an amendment, intended to be proposed by them, jointly, to Senate bill 4358, supra, which was ordered to lie on the table and to be printed.

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NATIONAL AIR QUALITY STANDARDS ACT OF 1970

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Order No. 1214, S. 4358.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read the bill by title, as follows: S. 4358, to amend the Clean Air Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

Mr. MUSKIE. Mr. President, one of the most troubling aspects of our national mood is the crisis in confidence which afflicts too many Americans in all walks of life. It is a crisis marked by self-doubt, by a fear that our problems may be greater than our capacity to solve them, that our public and private institutions may be inadequate at a time when we need them most.

Our environmental problems have contributed heavily to that self-doubt and fear. A nation which has been able to conquer the far reaches of space, which has unlocked the mysteries of the atom, and which has an enormous reserve of economic power, technological genius, and managerial skills, seems incapable of halting the steady deterioration of our air, water, and land.

The legislation we take up today

provides the Senate with a moment of truth: a time to decide whether or not we are willing to let our lives continue to be endangered by the wasteful practices of an affluent society, or whether we are willing to take the difficult but necessary steps to breathe new life into our fight for a better quality of life.

This legislation will be a test of our commitment and a test of our faith: in our institutions, in our capacity to find answers to difficult economic and technological problems, and in the ability of American citizens to rise to the challenge of ending the threat of air pollution.

I am prepared to affirm that faith—on the basis of the knowledge we have gained from existing air pollution control legislation, on the basis of what Americans have been telling me and other Members of the Senate about there determination to overcome the obstacles to clean air.

I. THE NEED FOR THE LEGISLATION

Mr. President, we are considering this legislation in a year of environmental concern. The President devoted much of his state of the Union message to the environment, young and old together marked Earth Day in April, and Congress has considered an unprecedented number of bills dealing with the degradation of our air, water, and land.

In January of this year the President signed the National Environmental Policy Act. That law commits all agencies of the Federal Government to continuing environmental concern. In April of this year the Water Quality Improvement Act, built upon the record established by the Congress since 1965 in the

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area of water pollution control, was enacted.

The bill we consider today, however, faces the environmental crisis with greater urgency and frankness than any previous legislation. The effect of these amendments to the Clean Air Act will be felt by all Americans. This bill states that all Americans in all parts of the Nation should have clean air to breathe, air that will have no adverse effects on their health. And this bill is aimed at putting in motion the steps necessary to achieve that level of air quality within the next 5 years.

It is a tough bill, because only a tough law will guarantee America clean air. It is a necessary bill, because the health of our people is at stake.

Over 200 million tons of contaminants are spilled into the air each year in America. Each year we soil more clothes and buildings, destroy more plant and animal life, and threaten irreversible atmospheric and climatic changes. And each year these 200 million tons of pollutants endanger the health of our people.

The costs of air pollution can be counted in death, disease and disability; it can be measured in the billions of dollars of property losses; it can be seen and felt in the discomfort of our lives.

A reduction of 50 percent in air pollution in urban areas would result in savings of over $2 billion in the annual costs of health care in America.

So there is a need for this legislation. During the past year all of us have recognized this need. Last month, in transmitting the first annual report of the Council on Environmental Quality, President Nixon recognized this need.

Man—

He said—

has been too cavalier in his relations with

nature. Unless we arrest the depredations that have been inflicted so carelessly on our natural systems . . . we face the prospect of ecological disaster.

In hearings on the bill before us, Mr. Joseph Germano, a steelworker from Chicago, also recognized this need. He told the committee:

This old philosophy, that when you see the smoke rolling out of the tops of the blast furnaces there is prosperity, doesn't go anymore. The people don't look at that anymore. Prosperity doesn't mean anything if they are not going to live to enjoy the prosperity.

All Americans have agreed on the need for action. It is now time to determine whether the agreement has reflected only a lack of disagreement, or a genuine commitment to action.

II. A REVIEW OF THE LAW

The bill now before the Senate would amend the Clean Air Act. It is consistent with the purpose of that law and with the basic approach of the present program. In the Air Quality Act of 1967, Congress adopted this basic approach in amendments to the Clean Air Act of 1963.

The Senate report on the 1967 bill stated the purposes of the legislation:

(It) is the intent of the Committee to enhance air quality and to reduce harmful pollution emissions anywhere in the country, and to give the secretary authority to implement that objective in the absence of effective state and local control.

The committee feels that S. 4358 is consistent with those purposes and reflects knowledge gained since the law has been in force.

The 1967 established procedures for the achievement and maintenance of federally approved regional standards of ambient air quality. These standards, based on Federal criteria documents describing the effects of pollutants on health and welfare, are adopted and enforced on the State and local level. In the event that adequate standards are not developed or enforced, the Federal Government assumes the responsibility.

The underlying wisdom of the original legislation has been confirmed. We have learned from the criteria documents which have been issued for five pollutants that more decisive action must be taken now. We have learned from the standards-setting process that public participation is important, and we have learned from experience with implementation of the law that States and localities need greater incentives and assistance to protect the health and welfare of all people.

III. WHAT WE HAVE LEARNED FROM THE LAW

From the operations of the existing law, we have learned a great deal—about the concern of Americans over air pollution, about the response of polluters to this concern, and about the sacrifices we must make to protect our health.

The effectiveness of existing law depends in great part on the willingness of people to make tough decisions concerning the quality of air they want to breathe. And it depends on their willingness to make their wishes known in public hearings on the local level. This experiment in public participation has worked. It has opened doors once closed. People have become involved in the standards-setting process. They have learned of the threats to their health and they have sought to make the program responsive to their needs.

At the same time, some industries have not exerted their best efforts to control air pollution. Two steel companies in the Chicago area, for example, dumped more pollutants into the air in 1968 than in 1963—3,500 tons more. Oftentimes, funds which should have gone for air pollution control have been spent on advertising and public relations designed to

reduce the pressure on the companies to do what is necessary.

In the face of citizen concern and corporate resistance, we have learned that the air pollution problem is more severe, more pervasive, and growing faster than we had thought. Unless we recognize the crisis and generate a sense of urgency from that recognition, lead times may melt away without any chance at all for a rational solution to the air pollution problem.

IV. WHAT WE HAVE LEARNED ABOUT THE LAW

While we have learned much from the operations of the laws passed in 1963, 1965, and 1967, we have also learned about the law itself.

It is clear that Congress was right in 1967 when national emissions standards without ambient air quality standards for stationary sources were rejected—in favor of regional ambient air quality standards with emissions standards as tools to meet them. Emissions standards alone will not—and probably cannot—guarantee ambient air quality which will protect the public health. The implementation of air quality standards must take more forms than emissions controls.

It is also clear that ambient air quality standards which will protect the health of persons must be set as minimum standards for all parts of the Nation, and they must be met in all areas within national deadlines.

Congress did adopt emissions standards as the basic control technique for moving sources in 1965, because they are not controllable at the local level. Here we have learned that tests of economic and technological feasibility applied to those standards compromise the health of our people and lead to inadequate standards. It is clear that the long-range proposal for emission standards will only be adequate if the timetable is accelerated.

In 1963, Congress recognized that the Federal Government could not handle the enforcement task alone, and that the primary burden would rest on States and local governments. However, State and local governments have not responded adequately to this challenge. It is clear that enforcement must be toughened if we are to meet the national deadlines. More tools are needed, and the Federal presence and backup authority must be increased.

Finally no level of government has implemented the existing law to its full potential On all levels, the air pollution control program has been underfunded and undermanned. To implement the greater responsibilities of this bill, great financial commitments will have to be made and met at all levels. Air pollution control will be cheap only in relation to the costs of lack of control.

V. CHANGES RECOMMENDED

What we have learned—from and about the existing law—forms the basis of the changes recommended by the committee. Because we have fallen behind in the fight for clean air, it is not enough to implement existing law. We must go further. The Senate committee report on the Air Quality Act of 1967 warned polluters:

> Considerations of technology and economic feasibility, while important in helping to develop alternative plans and schedules for achieving goals of air quality, should not be used to mitigate against protection of the public health and welfare.

That warning, Mr. President, has been on the books of this committee for 3 years, for all to read.

Contrary to this intent, these considerations have been used as arguments to compromise the public health. Therefore, the committee has made explicit in this bill what is implicit to

standards designed to protect our health. That concept and that philosophy are behind every page of the proposed legislation.

The first responsibility of Congress is not the making of technological or economic

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judgments—or even to be limited by what is or appears to be technologically or economically feasible. Our responsibility is to establish what the public interest requires to protect the health of persons. This may mean that people and industries will be asked to do what seems to be impossible at the present time. But if health is to be protected, these challenges must be met. I am convinced they can be met.

First, the bill provides for national ambient air quality standards for at least ten major contaminants that must be met by national deadlines. This means that in every region of the country, air quality must be better than that level of quality which protects health. Anybody in this Nation ought to be able at some specific point in the future to breathe healthy air.

Second, national air quality goals—protective against any known or anticipated adverse environmental effects—will be set for the major pollutants and must also be achieved within specific time-frames on a regional basis. Air quality goals are especially important because some pollutants may have serious effects on the environment at levels below those where health effects may occur. For example, the Secretary would be expected to disapprove regional air quality goals which would delay the application of controls required to protect plants and animals from the well-known hazards of exposure to fluorides.

Third, the bill provides that newly constructed sources of pollution must meet rigorous national standards of performance. While we clean up existing pollution, we must also guard against new problems. Those areas which have levels of air quality which are better than the national standards should not find their air quality degraded by the construction of new sources. There should be no "shopping around" for open sites. These standards of performance would not specify what technology must be used by particular types of sources, only the emissions performance that must be met.

Fourth, the bill provides the Secretary with the authority to prohibit emissions of hazardous substances. The committee was presented with strong evidence that any level of emissions of certain pollutants may produce adverse health effects that cannot be tolerated.

Fifth, the bill provides the Secretary with the authority to set emission standards for selected pollutants which cannot be controlled through the ambient air quality standards and which are not hazardous substances. These pollutants could later be covered by either ambient air quality standards or by prohibitions as hazardous substances.

These five sets of reqiurements will be difficult to meet. But the committee is convinced that industry can make compliance with them possible or impossible. It is completely within their control. Industry has been presented with challenges in the past that seemed impossible to meet, but has made them possible.

As far back as 1869, the Alkali Act prohibited the emissions of hydrogen sulfides in England. Although industry had said that requirement could not be met, there was compliance within 2 years.

At the beginning of World War II industry told President Roosevelt that his goal of 100,000 planes each year could not be met. The goal was met, and the war was won.

And in 1960, President Kennedy said that America would land a man on the moon by 1970. And American industry did what had to be done.

Our responsibility in Congress is to say that the requirements of this bill are what the health of the Nation requires, and to challenge polluters to meet them.

The committee has also recommended significant changes in title II of the Act dealing with moving sources, and especially with automobiles.

In 1968, moving sources were responsible for more than 42 percent of the total emissions of the five major pollutants—including 64 percent of the carbon monoxide and 50 percent of the hydrocarbons. In health effects, these pollutants mean cancer, headaches, dizziness, nausea, metabolic and respiratory diseases, and the impairment of mental processes. Clearly, solving the air pollution problem

depends on the achievement of significant reductions in the emissions from automobiles. Clearly, protection of the public health requires quick and drastic reductions.

Since legislation to deal with the problem of automotive emissions was first introduced in 1964, the industry has known that they would have to develop the solutions to the problem. In 1965 they announced that national standards could be met in the fall of 1967.

As the report of the committee indicates, it is now clear that continued reliance on gradual reductions in automotive emissions would make achievement of the ambient air quality standards impossible within the national deadlines established in title I of this act. More important, it would continue hazards to our health long after they should have been eliminated.

In order to maintain these standards set under title I—standards which are necessary to protect the public health and which must be met in the next 5 years—the emissions standards for carbon monoxide, hydrocarbons, and nitrogen oxides which have been projected for 1980 must be met earlier. This bill would require that this be done by 1975.

To insure that production line vehicles perform adequately, this bill would require that each vehicle manufactured comply with the standards for a 50,000-mile lifetime. The manufacturer would be required to warranty the performance of each individual vehicle as to compliance with emission standards. The increased price of new cars that would be a result of this bill can be defended only if the emission control systems work satisfactorily for the life of the car.

The committee, in setting the 1975 deadline, made every effort to make that requirement consistent with what the industry has told the committee on many occasions over the years: It provides 2 years for research and development of the necessary technology, and 2 years to apply that technology in the mass production of vehicles.

In response to claims that these requirements cannot be met, the committee has included in the legislation an opportunity for a secretarial review of the 1975 deadline. A 1-year extension of the deadline could be granted upon a secretarial finding that such an extension would be necessary and justified. The bill also provides for a review of that decision by an appellate court.

It was only on the issue of secretarial review that the committee was divided. Several members, including myself, felt that an extension of the deadline was a major policy decision that should be made only by the Congress. We felt that if Congress decided the requirements of public health were not to be compromised in any way, any change in that policy would be properly reserved to the Congress.

It should be clear that the committee was unanimous on the important question of when review could be sought—either before Congress or the Secretary. In the committee's view, such review should not be available until the last possible moment. For an extension to be granted, the manufacturer would have to demonstrate not only impossibility, but also that all good-faith efforts had been made.

The committee is aware of the problems these requirements might create for individual companies. Therefore, the bill provides a procedure for mandatory licensing which would make available patents, trade secrets, or know-how necessary to achieve compliance with the Standards Act to any manufacturer who can show a need and to whom the information is

not otherwise available. This provision would also apply to stationary sources.

Mr. President, I should like to make the philosophy of the bill clear, with this emphasis:

Predictions of technological impossibility or infeasibility are not sufficient as reasons to avoid tough standards and deadlines, and thus to compromise the public health. The urgency of the problem requires that the industry consider, not only the improvement of existing technology, but also alternatives to the internal combustion engine and new forms of transportation. Only a clear cut and tough public policy can generate this kind of effort.

This philosophy has been stated by the committee before. In reporting the Air Quality Act of 1967 to the Senate, the committee said:

> The Committee recognizes the potential economic impact, and therefore economic risk, associated with major social legislative measures of this type. But this risk was assumed when the Congress enacted social security, fair labor standards, and a host of other legislation designed to protect the public welfare. Such a risk must again be assumed if the nation's air resources are to be conserved and enhanced to the point that generations yet to come will be able to breathe without fear of impairment of health.

Detroit has told the Nation that Americans cannot live without the automobile.

This legislation would tell Detroit that if that is the case, they must make an automobile with which Americans can live.

The third major area in which the committee has recommended significant changes is the area of enforcement. Standards alone will not insure breathable air. All levels of government must be given adequate tools to enforce those standards.

The committee remains convinced that the most effective enforcement of standards will take place on the State and lo-

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cal levels. It is here that the public can participate most actively and bring the most effective pressure to bear for clean air.

Public participation is therefore important in the development of each State's implementation plan. These plans do not involve technical decisions; they do not involve public policy choices that citizens should make on the State and local level. They should be consistent with a rational nationwide policy and would be subject to the approval of the Secretary.

The powers to enforce these standards must be increased for the State and local governments as well as the Federal Government. The bill thus requires adequate State enforcement authority as a part of implementation plans and provides that abatement orders may be issued by the Secretary or his representative. Violations of these orders will be punishable by statutory penalties of as much as $25,000 for each day of a first violation.

The bill also provides the Federal Government with the authority to use the influence of the Federal contract as an incentive to compliance with standards established under this act. Federal contracts could be awarded only to facilities which were in compliance with the standards and requirements of this act.

Finally, the bill extends the concept of public participation to the enforcement process. The citizen suits authorized in this legislation would apply important pressure. Although the committee does not advocate these suits as the best way to achieve enforcement, it is clear that they should be an effective tool.

VI. WHAT THE LAW CAN MEAN

These, then, are the commitments that the Congress should make—commitments to meaningful environmental protection; effective protection of the health of all Americans; and the early achievement of these goals.

Committing the Congress with this legislation, however, will not be enough. Here we can make only promises to provide the funds and manpower necessary to set and enforce the standards. We must carry this commitment through to the appropriations of those funds. If these promises that we make here are not kept, these will be empty promises.

May I re-emphasize the point, Mr. President, that the number of personnel in the agency available today to deal with these problems is less than 1,000. We asked the administration to give us its best estimate of the numbers needed and the costs to administer and fully implement the bill before us if it is enacted into law.

The details on the administration's figures are in the report. Personnel would have to be increased to 1,741 in the present fiscal year; 2,535 in fiscal 1972; and 2,930 in fiscal 1973. In 1973, in order to provide the necessary personnel, the annual appropriations would have to be $320 million.

We talked about commitment, Mr. President. The 1967 act has not worked as well as it should have because we did not provide the manpower and the money to enforce it. For that reason, we are now forced to consider a more stringent law. So, for those who look to the law enacted in 1967, to those who are tempted to weaken this one, let me make this point.

If the Senate passes the bill, if the House passes it in this form, and if the President signs it into law, we cannot make it work unless we have as a minimum the personnel and the dollars recommended by the administration.

Mr. President, I emphasize this because it is such an important point. The committee got these detailed estimates from the administration so that we could tell the Senate and the House of Representatives in advance what it is going to cost to make this law work.

I know the traditional attitude of the Appropriations Committee is that we in the legislative committees are good at putting together the big promises, but that since we do not have to concern ourselves with the details of what it will cost or how many people it will take, we are really not a very good bunch to write the figures into law.

This is one time a legislative committee got the details. They are here for all to see. If the members of the Appropriations Committee are interested in those details, they are here.

If there is any doubt on the part of any Senator about whether he would support the appropriations necessary to make this law work, let him vote against the bill. Let us not vote for empty promises.

Mr. President, I emphasize that this bill seeks a commitment not only from Congress but also from the people. As I said earlier in this statement, clean air will not come cheap and it will not come easy.

The legislation would require new kinds of decisions with respect to transportation and land-use policies. It would require new discipline of our desire for luxury and convenience. And it would require a new perspective on our world, a recognition that nothing is more valuable or essential to us than the quality of our air.

Mr. President, 100 years ago the

first board of health in the United States, in Massachusetts, said this:

> We believe that all citizens have an inherent right to the enjoyment of pure and uncontaminated air and water and soil, that this right should be regarded as belonging to the whole community and that no one should be allowed to trespass upon it by his carelessness and his avarice, or even by his ignorance.

Mr. President, 100 years later it is time to write that kind of policy into law. The pending bill is such a law. I urge the Senate to approve it overwhelmingly.

Mr. President, at this point I would like to pay tribute to all members of the Committee on Public Works and the Subcommittee on Air and Water Pollution for their involvement in, their commitment to, and their dedication to what, for me, has been one of the most unusual experiences of committee work since I have been a Member of the Senate.

Hearings on this legislation began early this year. They were concluded early in the spring, in ample time for us to have simply passed out any one of the bills that were introduced and considered our work done. But we were conscious of the fact that the legislation already enacted had proven inadequate.

We were also conscious of the fact that in the climate of environmental concern which we faced in the country, it was important that Congress give to the country the best bill it was possible for Congress to devise.

Since the completion of the hearings, therefore, the subcommittee and the full committee have spent long hours in deliberation and consultation and finally in decision. Never was a partisan line drawn in any of these deliberations. Never was there any effort to obstruct or delay the action of the committee.

The discussions were long because it was necessary to educate ourselves, the Senate and ultimately the country as to the options available to us and the implications of these options.

We have been conscious, I think, since early June that what we were considering writing into law could result in drastic changes in the pattern of the life we live in the urban areas of America. We felt that just such changes were essential if we were really to come to grips with the problem of air pollution. We cannot solve the problem of air pollution in the city of Washington by prohibiting backyard burning of leaves. That has already been done in some of the suburban counties. It does not begin to touch the job.

All of us in the Senate travel about this country by air. I know of no city of more than 50,000—and that includes my own State—which is not threatened already by the pall of smog. Beyond any question the automobile is the principal contributor to that pall; and the results have grown visibly since 1967. The problem that troubled the committee most was not the problem of the new car, but the problem of the used car. There are more than 100 million on the road. And before this law takes effect, if it is enacted into law, four or five new generations of automobiles will become used cars at the rate of 8 million to 9 million a year.

After new cars roll out of the showrooms onto the streets and into the control of their owners, it is technologically almost impossible to make them clean cars.

In title I of this act we have written a national deadline for the purpose of implementing applicable ambient air quality standards. That is going to require every State Governor and the mayor of every city in this country to impose strict controls in the use of automobiles before the new car is a clean one.

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The only way we can deal effectively with the used car is to begin making clean cars in Detroit. Under the program as it is presently planned, the used car population will not be cleaned up until 1990. Under the pending bill, the used car population would not be cleaned up until 1985.

Mr. President, that is not too soon to be concerned about the health effects of automobiles on the lives of the people living in these cities.

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Drastic medicine? Yes.

Necessary? Yes.

The industry will have 5 years to make its peace with this proposal. As we bear in mind the space program and other great technological achievements of American industry, I find it difficult to believe that, whatever their present doubts, they cannot meet the challenge of this bill.

They have been able to meet such challenges in the case of war when President Roosevelt asked them to build 100,000 planes a year.

They have been able to meet such challenges in the case of national curiosity when President Kennedy asked them to make it possible to send a man to the moon in the 1960's.

Here, in the case of a national objective more serious than either of those—the national health, I think that we have an obligation to lay down the standards and requirements of this bill.

I think that the industry has an obligation to try to meet them. If, in due course, it cannot, then it should come to Congress and share with the Congress—the representatives of the people—the need to modify the policy.

That is the philosophy of this bill. The committee felt it owed no less duty to the Senate and the Congress than to state it in these terms. That is why we have this kind of bill. It was not unreasonable or arbitrary in the sense that it was ill-considered. The committee spent hundreds of hours over weeks and months before it came to this hard decision.

Mr. President, I wish to list in the RECORD at this point the names of the members of the committee: Senator RANDOLPH, Senator YOUNG of Ohio, Senator MUSKIE, Senator JORDAN of North Carolina, Senator BAYH, Senator MONTOYA, Senator SPONG, Senator EAGLETON, Senator GRAVEL, Senator COOPER, Senator BOGGS, Senator BAKER, Senator DOLE, Senator GURNEY, and Senator PACKWOOD.

After all these hundreds of hours covering weeks and months of deliberations, all those Senators—obviously of widely varying political philosophies—voted unanimously to recommend to the Senate and Congress the passage of this bill, the goals it establishes, the sense of urgency it incorporates, and the program for meeting the problem. I cannot think of a major piece of domestic legislation that has had such complete committee support from that spectrum of opinion. There was no doubt in the minds of any of them about supporting it.

It is with that recommendation that I am proud to submit the legislation to the floor of the Senate.

At this point I would like to express my heartfelt appreciation to the chairman of the committee, the Senator from West Virginia (Mr. RANDOLPH), the ranking Republican member, the Senator from Kentucky (Mr. COOPER), the ranking Republican member of the subcommittee, the Senator from Delaware (Mr. BOGGS), and every one of the members of the committee for the most conscientious attention to duty, committee meetings, and the responsibilities this legislation imposes that I have ever witnessed in a committee in my experience.

This is not the usual pat on the

back one gets on the floor of the Senate. This is heartfelt. Not only did they contribute their energy and time, but the ideas in this bill could not be separated along party lines of Democratic and Republican. These are Democratic, Republican, liberal, and conservative ideas. This is an integrated piece of legislation incorporating the full thought of all members of the committee.

I would like to express my appreciation to the members of the committee staff. I include their names here because they have given such a fine example of the kind of staff work that is possible in Senate committees. They are: Mr. Richard B. Royce, chief clerk and staff director; Mr. M. Barry Meyer, chief counsel; Mr. Bailey Guard, assistant chief clerk for the minority; Mr. Tom Jorling, minority counsel; Mr. Leon G. Billings, Mr. Richard W. Wilson, Mr. Philip Cummings, Mr. Richard Grundy and Mr. Harold Brayman, professional staff members; and Mrs. Frances Williams, Miss Rebecca Beauregard, Miss Sally White, and Miss Cecily Corcoran of the committee staff.

I would like to express my appreciation to Mr. Eliot Cutler of my staff and to the members of the staffs of members of the committee.

Mr. GRIFFIN. Mr. President, will the Senator yield to me for a few minutes? I realize that the ranking Republican Member has a statement to make and I do not wish to impose too much on his time.

Mr. MUSKIE. I yield.

Mr. GRIFFIN. Needless to say, there are portions of this bill which have a significant impact on the State of Michigan. The Senator from Maine has addressed himself to those provisions. I realize, of course, that there are other important portions of the bill. I would be less than honest with the Senate if I did not indicate some serious misgivings about certain provisions of the bill which write into legislative concrete, in effect, that certain standards—standards which are exceedingly high—must be met by 1975 or 15 million workers will lose their jobs.

Is it the position of the Senator from Maine that the state of the art is such now that the standards for automobile exhaust set in this bill could be met now?

Mr. MUSKIE. If that were the case, I would say somebody has failed in discharging his responsibilities under the 1967 law in not requiring that such standards be met by models coming off the lines now. No, if we thought the technology existed today we would insist that it be incorporated in these cars today.

Mr. GRIFFIN. Is it a fact that no hearings were held by the committee with regard to the question as to whether the standards set in the bill could be met by 1975?

Mr. MUSKIE. Let me read something to the Senator from the testimony in 1967 of Mr. Thomas Mann, president of the Auto Manufacturers Association. He made several points, but on this one he said:

> My fourth point is related to the third: As research indentifies objectionable or harmful pollutants and determines dangerous levels to be avoided, it defines ambient air quality needs in terms of specific goals to be met. With these goals clearly established it becomes appropriate to project timetables for all industries or other sources of emissions so they can begin research and development work to devise methods of achieving the goals.

At that time we did not have criteria identifying the health effects of pollutants. So Mr. Mann urged research to find these defects before timetables were set He did not say that before we set timetables the committee should be satisfied that technology is available. No. He said, "With these goals"—talking about health

effect goals—"clearly established it becomes appropriate to project time tables for all industries or other sources of emissions so that they can begin research and development work to devise methods of achieving the goals."

Since then, under pressure of hearings first held by the subcommittee in 1964 and held almost every year since, the industry has come before us and clearly has been pushing technology, research, and development to the point that they now indicate to us not any commitment to what they can do, but the contention, as one president of one auto company said:

> You can't put this in the record, but we are that close.

If we are "that close," it seems to me we have to set the timetable and challenge them to meet it. They can always come back to Congress.

There is something here in Mr. Mann's testimony, in another portion of his statement, on the timetable question where he defines the process through which a company has to go in order to devise the changes necessary to meet the goals; that is a separate process, after they have been told what the goals are. He said:

> Normally, what I have referred to in the preceding paragraph takes approximately two years in addition to the time needed for design, research, and development stages.

A lot of the hardware is already being tested. We saw at the time of the hearings prototype models which already meet the 1975 standards. Various companies have differing degrees of competency to meet 1980 standards under the present program, but they recognize they have to push ahead.

There is another point I would like to make about the attitude of the automobile companies. It is surely understandable, under the pressures of customer demands and expectations, and under the kinds of pressure generated in connection with safety devices, that the industry wants to walk the extra mile in testing and refining any new technical hardware before putting it in the hands of the customers. That is where, it seems to me, we have a problem of such urgency that normal procedures have to be shortened if we are to achieve the goals.

Mr. GRIFFIN. With all deference to the distinguished Senator from Maine, I must say he has not given a very satis-

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fying answer so far as the junior Senator from Michigan is concerned. Let me elaborate a bit, if I may. It is fine and very desirable to set national goals as the committee seeks to do in this bill.

The Senator from Maine referred to President Kennedy's goal to reach the moon. With respect to that goal, I would remind the Senator from Maine that the Congress did not set itself up as a group of scientists and say, in legislative concrete, that—

> We shall reach the moon on such and such a date, and if we do not, those working in industries having to do with space achievements shall be put out of their jobs.

It is completely understandable——

Mr. MUSKIE. May I say that this bill does not say that.

Mr. GRIFFIN. It is understandable that the President of the United States or, perhaps, the Senate through a sense of the Senate resolution, might want to set a goal in this field, toward which we should strive. But what bothers me about this legislation is that it does not repose any real authority in those who have scientific competence and knowledge—those who could judge the state of the art and its applicability on a realistic

basis to this industry at any given point in time.

With all due respect, I believe the Senator from Maine and the committee have gone too far. There ought to be some flexibility in the hands of the Secretary of Health, Education, and Welfare or a committee of scientists and engineers—people with some competent ability to judge the state of the art as it continues to develop.

As I understand the situation, without any hearings at all, the committee has, itself, made what is, in effect, a scientific judgment; it has assumed the role of scientists, and said:

> This cannot be done now, but we think it can be done by 1975.

Without any particular basis for such a declaration.

Mr. MUSKIE. We made no such judgment.

Mr. GRIFFIN. Not only that it can be done, but "It will be done or you are out of business."

Mr. MUSKIE. We made no such statement.

Mr. GRIFFIN. That is the effect, as I understand it.

Mr. MUSKIE. Well, to clarify the Senator's understanding of the effect, I shall be happy to repeat what I said. We made no technological judgments in this bill. We do not presume to be in a position to do that. Neither have we made any judgment of our own with respect to the health effects of pollutants that are emitted by the automobile.

In that respect we did what Mr. Mann and the automobile industry suggested we do back in 1967. We directed the Secretary of HEW to issue criteria documents identifying those pollutants. This is what the criteria said:

> Air quality criteria documents for automobile related pollutant agents have provided information on the effect of those pollutants on health and welfare. As an example, health effects can be expected from carbon monoxide exposure of 8 to 10 parts per million for an 8-hour period. Many communities exceed these concentrations with unacceptable frequency. For example, carbon monoxide concentrations in Chicago exceed the standard more than 20 percent of the time.

This is the judgment the committee made—no more, no less.

Knowing what the health effects are, we could not see ourselves in the position of saying to the country:

> Emissions from automobiles are unhealthy. The agency we charged with giving us that information in 1967 has told us so. But we are going to leave it to the automobile industry to tell us when those health effects are to be eliminated.

We felt it was our responsibility, and no one else's, to establish the public policy. We are saying in this bill that this is what the public health requires. We are saying to the country, this is what the automobile ought to be measured against. We are saying to the industry, this is what you must try to do.

Congress, I assume, will be in session in 1971, 1972, 1973, 1974, and 1975—and possibly without any interruption if we continue at the present rate. The committee would be available to sit. The companies would be in a position to make their case. If the Congress, which would have made the policy in the first instance, is persuaded that the industry cannot do the job, Congress could change the policy.

It is conceivable, may I say to the Senator from Michigan, that by 1973 we may know a great deal more about the health effects of the automobile and decide that they are so bad that the companies ought to make the required changes by January 1, 1975—or stop producing cars until they do. I am not predicting that. I do not think that is necessary. I do not think that will happen.

But this would be—as it is now—a policy decision of such moment to the country that it ought to be made by nobody other than the Congress, so that the decision gets the visibility, the prestige and the responsibility that are necessary to deal with this problem.

It is not necessary to say that any company is going to be closed on January 1, 1975, but it is necessary for the Congress to say that they must meet the standards until the Congress itself decides otherwise. That is what we are asking. Five years is a long time for the companies to make their effort, then to make their case and then for Congress to consider a change of policy.

If the Senator from Michigan is going to assume that, in the face of a convincing demonstration, the Congress will irresponsibly shut down the automobile companies, then, of course, the Senator should vote against the bill.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. MUSKIE. Let me first read this letter of September 11, 1970, written to me by President E. N. Cole of General Motors. He says this:

> Remarkably low emissions can be achieved with experimental laboratory cars without any regard to mass production, manufacturing tolerances, durability, maintenance, cost, and conditions of customer use.

If I understand that sentence, he is saying that the way of dealing with these emissions is now available in the laboratory—that it can be done, and that what stands between us and January 1, 1975 is the development of the mass production techniques to convert what can now be done in the laboratory into a production line automobile. This man, who is a product of an American industry whose great genius is mass production, is now telling us that what is possible in the laboratory cannot be converted to the mass production line in 5 years.

I can remember, when the astronauts were burned in their space vehicle in Cape Kennedy, how long it took to completely change the system so a safe one could be sent to the moon.

Let me give the Senator another piece of information. Then he may respond. This information concerns the clean car race of a short time ago.

I read from this report:

> When the Wayne State University entry reached California, it was tested for pollution control. The results, after this 3600-mile race, showed that the student-modified internal combustion engine, using nonleaded gasoline, surpassed not only the proposed 1975 Federal standards—

And by that is meant the ones agreed to by the administration—

> but were far below the proposed 1980 Federal standards—

which the subcommittee has recommended be advanced for 1975.

So these students were able to achieve what the automobile industry tells us they cannot achieve.

Mr. GRIFFIN. Mr. President, I wish to respond briefly; I shall have more to say tomorrow. I am aware of the fact that the automobile industry has made, and is making, great progress in the effort to reduce auto exhaust pollution.

Is it not the case that a 70-percent reduction in the auto exhaust pollution has been achieved, or is being achieved, as measured by standards already set? And is it not true that the provision of this bill would require what amounts to a further reduction by 90 percent of the 30 percent that has not yet been achieved? Roughly, is that not a fair statement?

Mr. MUSKIE. I think that is roughly so; yes. I will check the exact

figures, but I am prepared to accept that.

Mr. GRIFFIN. Although the Senator from Maine has read some portions of a letter, I shall make the statement—on the basis of information that I have been able to gather—that the technology is not available today to meet the standards set in this bill, and it appears to me that the Senator from Maine and his committee have only a pious hope that the technology can be available for cars to be produced in 1975.

To suggest that 1975 is a long time away, with all due respect, is to indicate not very much acquaintance with the automobile industry and what is involved in producing automobiles.

Mr. MUSKIE. Mr. President, will the Senator yield? Is it all right for the Senator from Maine to rely on the testimony of the industry spokesman in 1967?

Mr. GRIFFIN. It takes a long time from the drawing board stage to make a major

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or significant change in an automobile—a long time until it rolls off the assembly line. That fact must not be overlooked because it can mean a great deal to those who work in the automobile industry. In fact, I understand that it can take as much as 43 months to incorporate a major change into an automobile.

So, while the committee may say that it is giving the automobile industry until 1975, it is not—because the industry must have the know-how and begin making such a change long before 1975. Indeed, it may be necessary to have the technology perfected and ready to incorporate into an automobile 43 months before the final product begins to roll off the 1975 assembly line.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. GRIFFIN. And then the Senator says, in effect, that if the industry cannot do that, it can come back to Congress for what essentially would be a political decision.

Mr. MUSKIE. Will the Senator yield?

Mr. GRIFFIN. I think that is very unwise.

Mr. MUSKIE. Will the Senator yield?

Mr. GRIFFIN. I want to make it very clear, I think the goal is fine. But the policy we establish should be administered by those with some degree of technical competence—by people who have some basis for judging the state of the art—who will not have to come back to Congress and make a political appeal.

Another point that I wish to make is this: under the bill, I understand that economic feasibility is not a factor. Accordingly, if it cost $15,000 or $20,000 to produce an automobile to meet the standards, that would not be taken into account, as I understand this bill.

Mr. MUSKIE. Is that a figure that the industry has authorized?

Mr. GRIFFIN. No, I am just saying if it should cost that much, it would not make any difference.

Mr. MUSKIE. The Senator from Maine does not use figures that lightly.

Mr. GRIFFIN. Will it?

Mr. MUSKIE. I do not know. I do not think anyone knows.

Mr. GRIFFIN. Should it be talked about then? Does the Senator from Maine know what it would cost?

Mr. MUSKIE. No. I said in my statement—I have not hidden anything—that our responsibility is to tell the industry what the public health requires. If the Senator thinks the industry ought to make that pub-

lic health decision, I do not agree with him. If he says that the industry should tell us—and that not until the industry tells us it can build this automobile should we require it—that I do not agree with him.

Where would the Senator place a decision of such importance to the public health? In the boards of directors of these great motor companies? Does Congress have no responsibility?

We began talking to the industry about this problem in 1964, not just recently. The Senator speaks as though we had only a nodding acquaintance with this problem, the industry attitudes and the development of technology over the years. We have been working on this matter for 7 years. I have been in Detroit. I have been in the laboratories of all the companies. They have not hesitated to bring their prototypes here.

We have tried to get all of the insight into and feel for the companies' capability in this area that we could, but I will say in frankness that the industry has never, during all these years, shown any sense of urgency about anything except the preservation of the internal combustion engine—no real push to do anything else, or to explore any other technology, because they have said, "We can clean up the internal combustion engine."

They told us that in 1964; they told us that in 1965; they have told us that on innumerable occasions. So we are not talking about 5 years between now and 1975; we are talking about the years between 1964 and 1975, when they should have generated the feeling of urgency.

Sure, we set a target for them, an informal one: "You have got to clean up the automobile." Did that create a feeling of urgency? The Senator says they can do it in 43 months; why did they not do it in 43 months?

Mr. GRIFFIN. The Senator misunderstood me. I said it could take 43 months from the time the technology is available.

Mr. MUSKIE. I doubt that. That is inconsistent with Mr. Mann's testimony of 1967 that I read. He said:

> What I have referred to in the preceding paragraph takes approximately two years.

They are up to 43 months now that they are under the gun. At the time of Mr. Mann's testimony, was opposing proposals giving the States authority to set different standards in every State. I did not put these words in his mouth; he stated them.

It is not this committee's responsibility to perfect the technology required by this deadline. That we ought to have some feel for it, that we ought to have some understanding of the industry's problems, that we ought not to do it hastily or arbitrarily, I will concede as a measure of congressional responsibility. But we have been working on this matter since 1964. The Senator might look at our hearings over the years, and judge for himself why I have tried to communicate a sense of urgency to this industry.

Mr. GRIFFIN. Did the committee have any hearings in this session on this problem as to the state of the art—on the likelihood or possibility that this goal can be reached by 1975?

Mr. MUSKIE. Yes, we had testimony jointly before the Commerce Committee and before our committee from the automobile companies on the state of the art. With respect to this specific deadline, no.

Mr. GRIFFIN. On this particular bill?

Mr. MUSKIE. Yes, but not on this specific deadline.

Mr. GRIFFIN. As to whether this deadline was realistic?

Mr. MUSKIE. No.

Mr. GRIFFIN. No hearings?

Mr. MUSKIE. The deadline is based not, I repeat, on economic technological feasibility, but on considerations of public health. We think, on the basis of the exposure we have had to this problem, that this is a necessary and reasonable standard to impose upon the industry. If the industry cannot meet it, they can come back.

I think that, in terms of public health, if we do not say that this is necessary, there is nobody to say it. But on the question of technological and economic feasibility, there are all kinds of people who complain that it cannot be done. We are the only ones who can say to the automobile industry, and make it stick, "The public health requires this."

That is what this bill says, and nothing more.

Why does not the industry say, if it wants us to make a technological judgment, "All right, we will try, and we will come back in 1973, and let us both take a look at it then." No, they want us to make that judgment now.

Mr. GRIFFIN. I want to be sure the distinguished Senator from Delaware has time to make his statement. I would not say this bill plays "Russian roulette"—let me say it plays "economic roulette," with millions of jobs in the automobile industry. Without adequate expertise, without the kind of scientific knowledge that is needed—with the hearings that are necessary and expected, this bill would write into legislative concrete requirements that can be impossible—and that will literally force an industry out of existence. That may be fine for the Senator from Maine to advocate——

Mr. MUSKIE. Mr. President, I have not said that nor advocated that.

Mr. GRIFFIN. I want to remind the Senate that a great many jobs are involved. One job out of seven in the United States depends directly or indirectly, on the manufacture, sale, or service of automobiles.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. GRIFFIN. I yield.

Mr. MUSKIE. The Senator complains when he says I distort what he says. I thought I had made it eminently clear that I was not saying what he has just put in my mouth.

What I said—I will repeat it to make it clear—is that in the judgment of this committee—this includes Senators from the Senator's side of the aisle—some of a pretty conservative political persuasion—that Congress has the duty to say, "This is what ought to be done in the interests of the health of the country." If it cannot be done, if the industry has made a good faith effort, it can come back to Congress.

We speak of Russian roulette. If it is really that choice—and I do not agree that it is—I would rather play Russian roulette with the automobile companies than with the trapped inhabitants of urban America. Their health is involved.

But it is not a question of Russian roulette, and no amount of rhetorical exaggeration can make it that. What we are talking about is very clear and simple. We are saying that Congress, in the interest of public health, should say to the country and to the industry that this is what that health requires. Then industry should go to work over the next 5 years

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to either make it possible or, if it proves to be impossible, ask Congress to change the policy.

That is all there is here, and it is tough. The Senator thinks it is tough, and we understand it is tough. We have no desire to be unreasonable.

Does the Senator tell me that Senator JOHN COOPER is an unreasonable man, or Senator CALEB BOGGS, or the other Senators on this committee? They are thoughtful men, and they have given this matter thoughtful consideration, and they were not engaged in a game of Russian roulette.

Mr. BOGGs. Mr. President, I commend the distinguished chairman of the subcommittee, the floor manager of this bill, on his excellent opening statement. He has ably and carefully covered the intention of the committee as well as the provisions of the bill.

I wish to express my strong support for S. 4358, a bill that is intended to help bring clean air to every city and town in the United States.

This measure may be the most important to be considered by the Senate this year, charting, as it does, a path toward a better quality of life in America. As President Nixon stated on the first morning of this decade:

> The 1970's absolutely must be the years when America pays its debt to the past by reclaiming the purity of its air, its waters, and our living environment. It is literally now or never.

The amendments to the Clean Air Act seek to answer the President's call by improving existing laws and developing a method to insure that the air of the United States attains a level of purity compatible with public health.

The proposed legislation incorporates many of the best proposals offered by Members of the Senate, in particular the distinguished chairman of the Subcommittee on Air and Water Pollution (Mr. MUSKIE). The testimony during 11 days of hearings was also most valuable in shaping this legislation.

Yet much of the basic outline for S. 4358 was established by President Nixon in his thoughtful message on the environment last February.

Mr. President, I ask unanimous consent that the President's February 10 environmental message to Congress be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BOGGS. In addition, I ask unanimous consent that the Council on Environmental Quality's discussion on air pollution in its first annual report be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BOGGS. At this point, I would like to discuss some of the President's proposals and the manner in which they were incorporated into the committee's bill.

One of President Nixon's most significant proposals called for establishing national ambient air quality standards. This bill incorporates that proposal, seeking to insure that the air around us will be protective of health in every corner of the nation.

President Nixon asked Congress to accelerate the designation of air quality control regions. This measure requires, 90 days after passage, that air pollution control regions be created to cover every portion of the Nation.

President Nixon's program for air pollution control sought to establish national emission standards for pollutants of an extremely hazardous character, as well as national standards of performance for major classifications of new facilities. The proposed legislation gives the President authority in both of these areas.

President Nixon sought Federal enforcement authority covering intrastate violations in addition to authority over interstate violations. This bill extends that authority to the

President, while maintaining a primary enforcement reliance at the State level.

President Nixon sought court imposed fines of up to $10,000 per day for violation of emission requirements. It was the committee's judgment that a penalty of up to $25,000 per day would prove more effective.

President Nixon in February announced that more stringent motor vehicle emission standards for the 1975 model year would be adopted. This bill for the first time writes into law specific standards intended to enhance air quality and to place a virtually pollution-free car on the Nation's highways by 1975.

President Nixon's environmental program sought new procedures to inspect new cars on the assembly line to assure that they meet the low-pollution standard. This measure adopts procedures for assembly line testing, and adds a provision requiring warranty of air pollution control performance for 50,000 miles.

President Nixon sought authority to regulate fuels and fuel additives. The proposed legislation gives such authority, tempered with a necessity that the need for such regulation be examined in public hearings if the Secretary seeks to control or prohibit use of a fuel for reasons other than the protection of health.

President Nixon sought financial support for research and development of low-pollution vehicles driven by unconventional power sources. This bill expands the air pollution control program to support such research and development on an accelerated basis. These points, I believe, demonstrate the tremendous contribution the administration has made to the shaping of this legislation.

There is one other section of this bill I would like to mention. It is a section that has not received broad public attention, yet it is a vital provision of the bill. This is section 118, dealing with the control of pollution from Federal facilities. President Nixon has pledged his support for effective pollution abatement at Federal facilities. This section of the bill reinforces the President's stand and encourages publicly owned and operated facilities across our Nation to become models of environmental enhancement and pollution control.

The key word is "leadership." For that is what the proposed legislation seeks to create—a method and pattern for national leadership in the fight to preserve and enhance our environment. This legislation may be characterized as tough. But a tough bill is essential to meet the vast challenge facing us.

It is a workable and realistic bill, taken as a whole. Yet I know there are provisions in the bill that raise some concern among my colleagues, as the Senator from Michigan (Mr. GRIFFIN) just stated.

One involves the warranty provision incorporated into section 207 (c) of the bill. The full Committee on Public Works amended the warranty provision that had been reported by the Subcommittee on Air and Water Pollution, and I believe the full committee's change greatly improves this section, strengthening the warranty by making it more realistic.

Yet there remains a question over whether the performance of the air pollution control system should be warranted, as proposed in the bill, or whether the warranty should extend to the materials, the design, and the workmanship used to create that pollution control system.

The second concern of some magnitude involves the procedure to be employed to extend the deadline for marketing a car that will meet the standard established under section

202(b) (1) and (2). The Committee on Public Works added to section 202 a provision suggested by Senator COOPER and Senator BAKER. This provision, section 202(b) (4) would allow a vehicle manufacturer to seek a 1-year extension in the deadline if effective control technology does not exist. The Secretary's decision on the extension could be appealed to the U.S. Court of Appeals for the District of Columbia.

I commend the distinguished ranking Republican member of the committee (Mr. COOPER) and my distinguished colleague (Mr. BAKER) for their work on this provision. Such a review procedure is needed to prevent chaos in the event that the automobile industry makes every possible effort to achieve a 90-percent reduction in emissions and still cannot achieve that goal.

The distinguished Senator from Kansas (Mr. DOLE) has indicated in his individual views that he will offer an amendment that will bring the Congress into that review procedure. It is my thought that congressional review is more appropriate in light of the responsibility assumed by the Congress in setting a specific standard. Nevertheless, I want to reiterate my view that the committee was wise to provide such a possible extension, with safeguards, whether that extension is reviewed by the Congress or the courts.

In closing, Mr. President, I wish to commend my colleagues on the Subcommittee on Air and Water Pollution and the full Committee on Public Works for their vigorous and thoughtful attention to this bill over the past several months. The committee and subcommittee devoted many long hours in numerous executive sessions in consideration of this legislation, working together to create a bill that will prove to be effective and workable. The leadership provided by the chairman of the full committee (Mr.

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RANDOLPH), the ranking member of the full committee (Mr. COOPER), and in particular, the chairman of the subcommittee (Mr. MUSKIE), has been an inspiration to every member of the committee. Their leadership in the effort to meet the challenge of air pollution has produced what I consider to be a responsible and thoughtful bill. I commend them.

In addition, I would like to thank the staff members of the committee, as well as the staffs for various members of the committee for their efforts to assist the committee in perfecting this legislation.

Mr. President, in closing I wish to commend this legislation to my colleagues for their consideration. I know there will be amendments seeking to strengthen and improve this bill. Undoubtedly many provisions will also receive attention in conference with the House, which has adopted legislation that has many differences with this bill. I shall listen carefully to the debate, as I know it will result in legislation that will have a beneficial impact for the decade of the 1970's and beyond. I urge support of this important legislation.

EXHIBIT 1

THE PRESIDENT'S MESSAGE ON THE ENVIRONMENT, FEBRUARY 10, 1970

To the Congress of the United States:

Like those in the last century who tilled a plot of land to exhaustion and then moved on to another, we in this century have too casually and too long abused our natural environment. The time has come when we can wait no longer to repair the damage already done, and to establish new criteria to guide us in the future.

The fight against pollution, however, is not a search for villains. For the most part, the damage done to our environment has not been the work of evil men, nor has it been the in-

evitable by-product either of advancing technology or of growing population. It results not so much from choices made, as from choices neglected; not from malign intention, but from failure to take into account the full consequences of our actions.

Quite inadvertently, by ignoring environmental costs we have given an economic advantage to the careless polluter over his more conscientious rival. While adopting laws prohibiting injury to person or property, we have freely allowed injury to our shared surroundings. Conditioned by an expanding frontier, we came only late to a recognition of how precious and how vulnerable our resources of land, water and air really are.

The tasks that need doing require money, resolve and ingenuity—and they are too big to be done by government alone. They call for fundamentally new philosophies of land, air and water use, for stricter regulation, for expanded government action, for greater citizen involvement and for new programs to ensure that government, industry and individuals all are called on to do their share of the job and to pay their share of the cost.

Because the many aspects of environmental quality are closely interwoven, to consider each in isolation would be unwise. Therefore, I am today outlining a comprehensive, 37-point program, embracing 23 major legislative proposals and 14 new measures being taken by administrative action or Executive Order in five major categories:

Water pollution control.
Air pollution control.
Solid waste management.
Parklands and public recreation.
Organizing for action.

As we deepen our understanding of complex ecological processes, as we improve our technologies and institutions and learn from experience, much more will be possible. But these 37 measures represent actions we can take now, and that can move us dramatically forward toward what has become an urgent common goal of all Americans: the rescue of our natural habitat as a place both habitable and hospitable to man.

WATER POLLUTION

Water pollution has three principal sources: municipal, industrial and agricultural wastes. All three must eventually be controlled if we are to restore the purity of our lakes and rivers.

Of these three, the most troublesome to control are those from agricultural sources: animal wastes, eroded soil, fertilizers and pesticides. Some of these are nature's own pollutions. The Missouri River was known as "Big Muddy" long before towns and industries were built on its banks. But many of the same techniques of pest control, livestock feeding, irrigation and soil fertilization that have made American agriculture so abundantly productive have also caused serious water pollution.

Effective control will take time, and will require action on many fronts: modified agricultural practices, greater care in the disposal of animal wastes, better soil conservation methods, new kinds of fertilizers, new chemical pesticides and more widespread use of natural pest control techniques. A number of such actions are already underway. We have taken action to phase out the use of DDT and other hard pesticides. We have begun to place controls on wastes from concentrated animal feedlots. We need programs of intensified research, both public and private, to develop new methods of reducing agricultural pollution while maintaining productivity. I have asked The Council on Environmental Quality to press forward in this area. Meanwhile, however, we have the technology and the resources to proceed *now* on a program of swift clean-up of pollution from the most acutely damaging sources: municipal and industrial waste.

Municipal wastes

As long as we have the means to do something about it, there is no good reason why municipal pollution of our waters should be allowed to persist unchecked.

In the four years since the Clean Waters Restoration Act of 1966 was passed, we have failed to keep our promises to ourselves: Federal appropriations for constructing municipal treatment plants have totaled only about one-third of authorizations, Municipalities themselves have faced increasing difficulty in selling bonds to finance their share of the construction costs. Given the saturated condition of today's municipal bond markets, if a clean-up program is to work it has to provide the means by which municipalities can finance their share of the cost even as we increase Federal expenditures.

The best current estimate is that it will take a total capital investment of about $10 billion over a five-year period to provide the municipal waste treatment plants and interceptor lines needed to meet our national water quality standards. This figure is based on a recently-completed nationwide survey of the deficiencies of present facilities, plus projections of additional needs that will have developed by then —to accommodate the normal annual increase in the volume of wastes, and to replace equipment that can be expected to wear out or become obsolete in the interim.

This will provide every community that needs it with secondary waste treatment, and also special, additional treatment in areas of special need, including communities on the Great Lakes. We have the industrial capacity to do the job in five years if we begin now.

To meet this construction schedule, I pro-

pose a two-part program of Federal assistance:

—*I propose a Clean Waters Act with $4 billion to be authorized immediately, for Fiscal 1971, to cover the full Federal share of the total $10 billion cost on a matching fund basis. This would be allocated at a rate of $1 billion a year for the next four years with a reassessment in 1973 of needs for 1975 and subsequent years.*

By thus assuring communities of full Federal support, we can enable planning to begin *now* for all needed facilities and construction to proceed at an accelerated rate.

—*I propose creation of a new Environmental Financing Authority, to ensure that every municipality in the country has an opportunity to sell its waste treatment plant construction bonds.*

The condition of the municipal bond market is such that, in 1969, 509 issues totaling $2.9 billion proved unsalable. If a municipality cannot sell waste treatment plant construction bonds, EFA will buy them and will sell its own bonds on the taxable market. Thus, construction of pollution control facilities will depend not on a community's credit rating, but on its waste disposal needs.

Providing money is important, but equally important is where and how the money is spent. A river cannot be polluted on its left bank and clean on its right. In a given waterway, abating *some* of the pollution is often little better than doing nothing at all, and money spent on such partial efforts is often largely wasted. Present grant allocation formulas—those in the 1966 Act—have prevented the spending of funds where they could produce the greatest results in terms of clean water. Too little attention has been given to seeing that investments in specific waste treatment plants have been matched by other municipalities and industries on the same waterway. Many plants have been poorly designed and inefficiently operated. Some municipalities have offered free treatment to local industries, then not treated their wastes sufficiently to prevent pollution.

To ensure that the new funds are well invested, five major reforms are needed. One requires legislation: the other four will be achieved by administrative action.

—*I propose that the present, rigid allocation formula be revised, so that special emphasis can be given to areas where facilities are most needed and where the greatest improvements in water quality will result.*

Under existing authority, the Secretary of the Interior will institute four major reforms:

—*Federally assisted treatment plants will be required to meet prescribed design, operation and maintenance standards, and to be operated only by State-certified operators.*

—*Municipalities receiving Federal assistance in construction plants will be required to improve reasonable users' fees on industrial users sufficient to meet the costs of treating industrial wastes.*

—*Development of comprehensive river basin plans will be required at an early date, to ensure that Federally assisted treatment plants will in fact contribute to effective clean-up of entire river basin systems. Collection of existing data on pollution sources and development of effluent inventories will permit systems approaches to pollution control.*

—*wherever feasible, communities will be strongly encouraged to cooperate in the construction of large regional treatment facilities, which provide economies of scale and give more efficient and more thorough waste treatment.*

Industrial Pollution

Some industries discharge their wastes into municipal systems; others dis-

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charge them directly into lakes and rivers. Obviously, unless we curb industrial as well as municipal pollution our waters will never be clean.

Industry itself has recognized the problem, and many industrial firms are making vigorous efforts to control their water-borne wastes. But strict standards and strict enforcement are nevertheless necessary—not only to ensure compliance, but also in fairness to those who have voluntarily assumed the often costly burden while their competitors have not. Good neighbors should not be placed at a competitive disadvantage because of their good neighborliness.

Under existing law, standards for water pollution control often are established in only the most general and insufficient terms: for example, by requiring all affected industries to install secondary treatment facilities. This approach takes little account of such crucial variables as the volume and toxicity of the wastes actually being discharged, or the capacity of a particular body of water to absorb wastes without becoming polluted. Even more important, it provides a poor basis for enforcement: with no effluent standard by which to measure, it is difficult to prove in court that standards are being violated.

The present fragmenting of jurisdictions also has hindered comprehensive efforts. At present, Federal jurisdiction generally extends only to interstate waters. One result has been that as stricter State-Federal standards have been imposed, pollution has actually increased in some other waters—in underground aquifers and the oceans. As controls over interstate waters are tightened, polluting industries will

be increasingly tempted to locate on intrastate lakes and rivers—with a consequently increased threat to those waterways—unless they too are brought under the same strictures.

I propose that we take an entirely new approach: one which concerts Federal, State and private efforts, which provides for effective nationwide enforcement, and which rests on a simple but profoundly significant principle: that the nation's waterways belong to us all, and that neither a municipality nor an industry should be allowed to discharge wastes into those waterways beyond their capacity to absorb the wastes without becoming polluted.

Specifically, I propose a seven-point program of measures we should adopt *now* to enforce control of water pollution from industrial and municipal wastes, and to give the States more effective backing in their own efforts.

—I propose that State-Federal water quality standards be amended to impose precise effluent requirements on all industrial and municipal sources. These should be imposed on an expeditious timetable, with the limit for each based on a fair allocation of the total capacity of the waterway to absorb the user's particular kind of waste without becoming polluted.

—I propose that violation of established effluent requirements be considered sufficient cause for court action.

—I propose that the Secretary of the Interior be allowed to proceed more swiftly in his enforcement actions, and that he be given new legal weapons including subpoena and discovery power.

—I propose that failure to meet established water quality standards or implementation schedules be made subject to court-imposed fines of up to $10,000 per day.

—I propose that the Secretary of the Interior be authorized to seek immediate injunctive relief in emergency situations in which severe water pollution constitutes an imminent danger to health, or threatens irreversible damage to water quality.

—I propose that the Federal pollution-control program be extended to include all navigable waters, both inter- and intrastate, all interstate ground waters, the United States' portion of boundary waters, and waters of the Contiguous Zone.

—I propose that Federal operating grants to State pollution control enforcement agencies be tripled over the next five years—from $10 million now to $30 million in fiscal year 1975—to assist them in meeting the new responsibilities that stricter and expanded enforcement will place upon them.

AIR POLLUTION CONTROL

Air is our most vital resource, and its pollution is our most serious environmental problem. Existing technology for the control of air pollution is less advanced than that for controlling water pollution, but there is a great deal we can do within the limits of existing technology—and more we can do to spur technological advance.

Most air pollution is produced by the burning of fuels. About half is produced by motor vehicles.

Motor vehicles

The Federal Government began regulating automobile emissions of carbon monoxide and hydrocarbons with the 1968 model year. Standards for 1970 model cars have been made significantly tighter. This year, for the first time, emissions from new buses and heavy-duty trucks have also been brought under Federal regulation.

In future years, emission levels can and must be brought much lower.

The Secretary of Health, Education and Welfare is today publishing a notice of new, considerably more stringent motor vehicle emission standards he intends to issue for 1973 and 1975 models including control of nitrogen oxides by 1973 and of particulate emissions by 1975.

These new standards represent our best present estimate of the lowest emission levels attainable by those years.

Effective control requires new legislation to correct two key deficiencies in the present law:

(a) *Testing procedures.*—Under present law, only manufacturers' prototype vehicles are tested for compliance with emission standards, and even this is voluntary rather than mandatory.

I propose legislation requiring that representative samples of actual production vehicles be tested throughout the model year.

(b) *Fuel composition and additives.*—What goes into a car's fuel has a major effect on what comes out of its exhaust, and also on what kinds of pollution-control devices can effectively be employed. Federal standards for what comes out of a car's engine should be accompanied by standards for what goes into it.

I propose legislation authorizing the Secretary of Health, Education and Welfare to regulate fuel composition and additives.

With these changes, we can drastically reduce pollution from motor vehicles in the years just ahead. But in making and keeping our peace with nature, to plan only one year ahead or even five is hardly to plan at all. Our responsibility now is also to look beyond the Seventies, and the prospects then are uncertain. Based on present trends, it is quite possible that by 1980 the increase in the sheer number of cars in densely populated areas will begin outrunning the technological limits of our capacity to reduce pollution from the internal

combustion engine. I hope this will not happen. I hope the automobile industry's presently determined effort to make the internal combustion engine sufficiently pollution-free succeeds. But if it does not, then unless motor vehicles with an alternative, low-pollution power source are available, vehicle-caused pollution will once again begin an inexorable increase.

Therefore, prudence dictates that we move now to ensure that such a vehicle will be available if needed.

I am inaugurating a program to marshal both government and private research with the goal of producing an unconventionally powered virtually pollution-free automobile within five years.

—*I have ordered the start of an extensive Federal research and development program in unconventional vehicles, to be conducted under the general direction of the Council on Environmental Quality.*

—*As an incentive to private developers, I have ordered that the Federal Government should undertake the purchase of privately produced unconventional vehicles for testing and evaluation.*

A proposal currently before the Congress would provide a further incentive to private developers by authorizing the Federal government to offer premium prices for purchasing low-pollution cars for its own use. This could be a highly productive program once such automobiles are approaching development, although current estimates are that, initially, prices offered would have to be up to 200% of the cost of equivalent conventional vehicles rather than the 125% contemplated in the proposed legislation. The immediate task, however, is to see that an intensified program of research and development begins at once.

One encouraging aspect of the effort to curb motor vehicle pollution is the extent to which industry itself is taking the initiative. For example, the nation's principal automobile manufacturers are not only developing devices now to meet present and future Federal emission standards, but are also, on their own initiative, preparing to put on the market by 1972 automobiles which will not require and, indeed, must not use leaded gasoline. Such cars will not only discharge no lead into the atmosphere, but will also be equipped with still more effective devices for controlling emissions —devices made possible by the use of lead-free gasoline.

This is a great forward step taken by the manufacturers before any Federal regulation of lead additives or emissions has been imposed. I am confident that the petroleum industry will see to it that suitable nonleaded gasoline is made widely available for these new cars when they come on the market.

Stationary-source pollution

Industries, power plants, furnaces, incinerators—these and other so-called "stationary sources" add enormously to the pollution of the air. In highly industrialized areas, such pollution can quite literally make breathing hazardous to health, and can cause unforeseen atmospheric and meteorological problems as well.

Increasingly, industry itself has been adopting ambitious pollution-control programs, and state and local authorities have been setting and enforcing stricter antipollution standards. But they have not gone far enough or fast enough, nor, to be realistic about it, will they be able to without the strongest possible Federal backing. Without effective government standards, industrial firms that spend the necessary money for pollution control may find themselves at a serious economic disadvantage as against their less conscientious competitors. And without effective Federal standards, states and communities that require such controls find themselves at a similar disadvantage in attracting industry, against more permissive rivals. Air is no respecter of political boundaries: a community that sets and enforces strict standards may still find its air polluted from sources in another community or another state.

Under the Clean Air Act of 1967, the Federal government is establishing air quality control regions around the nation's major

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industrial and metropolitan areas. Within these regions, states are setting air quality standards —permissible levels of pollutants in the air— and developing plans for pollution abatement to achieve those air quality standards. All state air quality standards and implementation plans require Federal approval.

This program has been the first major Federal effort to control air pollution. It has been a useful beginning. But we have learned in the past two years that it has shortcomings. Federal designation of air quality control regions, while necesary in areas where emissions from one state are polluting the air in another, has been a time-consuming process. Adjoining states within the same region often have proposed inconsistent air quality standards, causing further delays for compromise and revision. There are no provisions for controlling pollution *outside* of established air quality control regions. This means that even with the designation of hundreds of such regions, some areas of the country with serious air pollution problems would remain outside of the program. This is unfair not only to the public but to many industries as well, since those within regions with strict requirements could be unfairly disadvantaged with respect to competitors that are not within regions. Finally, in-

sufficient Federal enforcement powers have circumscribed the Federal government's ability to support the states in establishing and enforcing effective abatement programs.

It is time to build on what we have learned, and to begin a more ambitious national effort. I recommend that the Clean Air Act be revised to expand the scope of strict pollution abatement, to simplify the task of industry in pollution abatement through more nearly uniform standards, and to provide special controls against particularly dangerous pollutants.

—*I propose that the Federal government establish nationwide air quality standards with the states to prepare within one year abatement plans for meeting those standards.*

This will provide a minimum standard for air quality for all areas of the nation, while permitting states to set more stringent standards for any or all sections within the state. National air quality standards will relieve the states of the lengthy process of standard-setting under Federal supervision, and allow them to concentrate on the immediate business of developing and implementing abatement plans.

These abatement plans would cover areas both inside and outside of Federally designated air quality control regions, and could be designed to achieve any higher levels of air quality which the states might choose to establish. They would include emission standards for stationary sources of air pollution.

—*I propose that designation of interstate air quality control regions continue at an accelerated rate, to provide a framework for establishing compatible abatement plans in interstate areas.*

—*I propose that the Federal government establish national emissions standards for facilities that emit pollutants extremely hazardous to health, and for selected classes of new facilities which could be major contributors to air pollution.*

In the first instance, national standards are needed to guarantee the earliest possible elimination of certain air pollutants which are clear health hazards even in minute quantities. In the second instance, national standards will ensure that advanced abatement technology is used in constructing the new facilities, and that levels of air quality are maintained in the face of industrial expansion. Before any emissions standards were established, public hearings would be required involving all interested parties. The States would be responsible for enforcing these standards in conjunction with their own programs.

I propose that Federal authority to seek court action be extended to include both inter- and intrastate air pollution situations in which, because of local non-enforcement, air quality is below national standards, or in which emissions standards or implementation timetables are being violated.

I propose that failure to meet established air quality standards or implementation schedules be made subject to court-imposed fines of up to $10,000 per day.

SOLID WASTE MANAGEMENT

"Solid wastes" are the discarded left-overs of our advanced consumer society. Increasing in volume, they litter the landscape and strain the facilities of municipal governments.

New packaging methods, using materials which do not degrade and cannot easily be burned, create difficult new disposal problems. Though many wastes are potentially re-usable, we often discard today what a generation ago we saved. Most bottles, for example, now are "non-returnable." We reprocess used paper less than we used to, not only adding to the burden on municipal sanitation services but also making wasteful use of scarce timberlands. Often the least expensive way to dispose of an old automobile is to abandon it—and millions of people do precisely that, creating eyesores for millions of others.

One way to meet the problem of solid wastes is simply to surrender to it: to continue pouring more and more public money into collection and disposal of whatever happens to be privately produced and discarded. This is the old way; it amounts to a public subsidy of waste pollution. If we are ever truly to gain control of the problem, our goal must be broader: to reduce the volume of wastes and the difficulty of their disposal, and to encourage their constructive re-use instead.

To accomplish this, we need incentives, regulations and research directed especially at two major goals: a) making products more easily disposable—especially containers, which are designed for disposal; and b) re-using and recycling a far greater proportion of waste materials.

As we look toward the long-range future—to 1980, 2000 and beyond—recycling of materials will become increasingly necessary not only for waste disposal but also to conserve resources. While our population grows, each one of us keeps using more of the earth's resources. In the case of many common minerals, more than half those extracted from the earth since time began have been extracted since 1910.

A great deal of our space research has been directed toward creating self-sustaining environments, in which people can live for long periods of time by re-processing, recycling and re-using the same materials. We need to apply this kind of thinking more consciously and more broadly to our patterns of use and disposal of materials here on earth.

Many currently used techniques of solid waste disposal remain crudely deficient. Re-

search and development programs under the Solid Waste Disposal Act of 1965 have added significantly to our knowledge of more efficient techniques. The Act expires this year. I recommend its extension, and I have already moved to broaden its programs

I have ordered a re-direction of research under the Solid Waste Disposal Act to place greater emphasis on techniques for re-cycling materials, and on development and use of packaging and other materials which will degrade after use—that is, which will become temporary rather than permanent wastes.

Few of America's eyesores are so unsightly as its millions of junk automobiles.

Ordinarily, when a car is retired from use it goes first to a wrecker, who strips it of its valuable parts, and then to a scrap processor, who reduces the remainder to scrap for sale to steel mills. The prices paid by wreckers for junk cars often are less than the cost of transporting them to the wrecking yard. In the case of a severely damaged or "cannibalized" car, instead of paying for it the wrecker may even charge towing costs. Thus the final owner's economic incentive to deliver his car for processing is slight, non-existent or even negative.

The rate of abandonment is increasing. In New York, 2,500 cars were towed away as abandoned on the streets in 1960. In 1964, 25,000 were towed away as abandoned; in 1969, more than 50,000.

The way to provide the needed incentive is to apply to the automobile the principle that its price should include not only the cost of producing it, but also the cost of disposing of it.

I have asked the Council on Environmental Quality to take the lead in producing a recommendation for a bounty payment or other system to promote the prompt scrapping of all junk automobiles.

The particular disposal problems presented by the automobile are unique. However, wherever appropriate we should also seek to establish incentives and regulations to encourage the re-use, re-cycling or easier disposal of other commonly used goods.

I have asked the Chairman of the Council on Environmental Quality to work with the Cabinet Committee on the Environment, and with appropriate industry and consumer representatives, toward development of such incentives and regulations for submission to the Congress.

PARKS AND PUBLIC RECREATION

Increasing population, increasing mobility, increasing incomes and increasing leisure will all combine in the years ahead to rank recreational facilities among the most vital of our public resources. Yet land suitable for such facilities, especially near heavily populated areas, is being rapidly swallowed up.

Plain common sense argues that we give greater priority to acquiring now the lands that will be so greatly needed in a few years. Good sense also argues that the Federal Government itself, as the nation's largest landholder, should address itself more imaginatively to the question of making optimum use of its own holdings in a recreation-hungry era.

I propose full funding in fiscal 1971 of the $327 million available through the Land and Water Conservation Fund for additional park and recreational facilities, with increased emphasis on locations that can be easily reached by the people in crowded urban areas.

I propose that we adopt a new philosophy for the use of Federally-owned lands, treating them as a precious resource—like money itself—which should be made to serve the highest possible public good.

Acquiring needed recreation areas is a real estate transaction. One-third of all the land in the United States—more than 750,000,000 acres—is owned by the Federal Government. Thousands of acres in the heart of metropolitan areas are reserved for only minimal use by Federal installations. To supplement the regularly-appropriated funds available, nothing could be more appropriate than to meet new real estate needs through use of presently-owned real estate, whether by transfer, sale or conversion to a better use.

Until now, the uses to which Federally-owned properties were put has largely been determined by who got them first. As a result, countless properties, with enormous potential as recreational areas linger on in the hands of agencies that could just as well—or better—locate elsewhere. Bureaucratic inertia is compounded by a quirk if present accounting procedures, which has the effect of imposing a budgetary penalty on any

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agency that gives up one piece of property and moves to another, even if the vacated property is sold for 10 times the cost of the new.

The time has come to make more rational use of our enormous wealth of real property, giving a new priority to our newly urgent concern with public recreation—and to make more imaginative use of properties now surplus to finance acquisition of properties now needed.

—*By Executive Order, I am directing the heads of all Federal agencies and the Administrator of General Services to institute a review of all Federally-owned real properties that should be considered for other uses. The test will be whether a particular property's continued present use or another would better serve the public interest, considering both the agency's needs and the property's location. Special emphasis will*

be placed on identifying properties that could appropriately be converted to parks and recreation areas, or sold, so that proceeds can be made available to provide additional park and recreational lands.

—I am establishing a Property Review Board to review the GSA reports and recommend to me what properties should be converted or sold. This Board will consist of the Director of the Bureau of the Budget, the Chairman of the Council of Economic Advisers, the Chairman of the Council on Environmental Quality and the Administrator of General Services, plus others that I may designate.

—I propose legislation to establish, for the first time, a program for relocating Federal installations that occupy locations that could better be used for other purposes.

This would allow a part of the proceeds from the sales of surplus properties to be used for relocating such installations, thus making more land available.

—I also propose accompanying legislation to protect the Land and Water Conservation Fund, ensuring that its sources of income would be maintained and possibly increased for purchasing additional parkland.

The net effect would be to increase our capacity to add new park and recreational facilities, by enabling us for the first time to use surplus property sales in a coordinated three-way program: a) by direct conversion from other uses; b) through sale of presently-owned properties and purchase of others with the proceeds; and c) by sale of one Federal property, and use of the proceeds to finance the relocation and conversion costs of making another property available for recreational use.

—I propose that the Department of the Interior be given authority to convey surplus real property to State and local governments for park and recreation purposes at a public benefit discount ranging up to 100 percent.

—I propose that Federal procedures be revised to encourage Federal agencies to make efficient use of real property. This revision should remove the budgetary penalty now imposed on agencies relinquishing one site and moving to another.

As one example of what such a property review can make possible, a sizable stretch of one of California's finest beaches has long been closed to the public because it was part of Camp Pendleton. Last month the Defense Department arranged to make more than a mile of that beach available to the State of California for use as a State park. The remaining beach is sufficient for Camp Pendleton's needs; thus the released stretch represents a shift from low-priority to high-priority use. By carefully weighing alternative uses, a priceless recreational resource was returned to the people for recreational purposes.

Another vast source of potential parklands also lies untapped. We have come to realize that we have too much land available for growing crops and not enough land for parks, open space and recreation.

—I propose that instead of simply paying each year to keep this land idle, we help local governments buy selected parcels of it to provide recreational facilities for use by the people of towns in rural areas. This program has been tried, but allowed to lapse; I propose that we revive and expand it.

—I propose that we also adopt a program of long-term contracts with private owners of idled farmland, providing for its reforestation and public use for such pursuits as hunting, fishing, hiking and picnicking.

ORGANIZING FOR ACTION

The environmental problems we face are deep-rooted and widespread. They can be solved only by a full national effort embracing not only sound, coordinated planning, but also an effective follow-through that reaches into every community in the land. Improving our surroundings is necessarily the business of us all.

At the Federal level, we have begun the process of organizing for this effort.

The Council on Environmental Quality has been established. This Council will be the keeper of our environmental conscience, and a goad to our ingenuity; beyond this, it will have responsibility for ensuring that all our programs and actions are undertaken with a careful respect for the needs of environmental quality. I have already assigned it major responsibilities for new program development, and I shall look to it increasingly for new initiatives.

The Cabinet Committee on the Environment, which I created last year, acts as a coordinating agency for various departmental activities affecting the environment.

To meet future needs, many organizational changes will still be needed. Federal institutions for dealing with the environment and natural resources have developed piecemeal over the years in response to specific needs, not all of which were originally perceived in the light of the concerns we recognize today. Many of their missions appear to overlap, and even to conflict. Last year I asked the President's Advisory Council on Executive Organization, headed by Mr. Roy Ash, to make an especially thorough study of the organization of Federal environmental natural resource and oceanographic programs, and to report its recommendations to me by April 15. After receiving their report I shall recommend

needed reforms, which will involve major reassignments of responsibilities among Departments.

For many of the same reasons, overlaps in environmental programs extend to the Legislative as well as the Executive branch so that close consultation will be necessary before major steps are taken.

No matter how well organized government itself might be, however, in the final analysis the key to success lies with the people of America.

Private industry has an especially crucial role. Its resources, its technology, its demonstrated ingenuity in solving problems others only talk about—all these are needed, not only in helping curb the pollution industry itself creates but also in helping devise new and better ways of enhancing all aspects of our environment.

I have ordered that the United States Patent Office give special priority to the processing of applications for patents which could aid in curbing environmental abuses.

Industry already has begun moving swiftly toward a fuller recognition of its own environmental responsibilities, and has made substantial progress in many areas. However, more must be done.

Mobilizing industry's resources requires organization. With a remarkable degree of unanimity, its leaders have indicated their readiness to help.

I will shortly ask a group of the nation's principal industrial leaders to join me in establishing a National Industrial Pollution Control Council.

The Council will work closely with the Council on Environmental Quality, the Citizens' Advisory Committee on Environmental Quality, the Secretary of Commerce and others as appropriate in the development of effective policies for the curbing of air, water, noise and waste pollution from industrial sources. It will work to enlist increased support from business and industry in the drive to reduce pollution, in all its forms, to the minimum level possible. It will provide a mechanism through which, in many cases, government can work with key leaders in various industries to establish voluntary programs for accomplishing desired pollution-control goals.

Patterns of organization often turn out to be only as good as the example set by the organizer. For years, many Federal facilities have themselves been among the worst polluters. The Executive Order I issued last week not only accepts responsibility for putting a swift end to Federal pollution, but puts teeth into the commitment.

I hope this will be an example for others.

At the turn of the century, our chief environmental concern was to conserve what we had—and out of this concern grew the often embattled but always determined "conservation" movement. Today, "conservation" is as important as ever—but no longer is it enough to conserve what we have; we must also restore what we have lost. We have to go beyond conservation to embrace restoration.

The task of cleaning up our environment calls for a total mobilization by all of us. It involves goverments at every level; it requires the help of every citizen. It cannot be a matter of simply sitting back and blaming someone else. Neither is it one to be left to a few hundred leaders. Rather, it presents us with one of those rare situations in which each individual everywhere has an opportunity to make a special contribution to his country as well as his community.

Through the Council on Environmental Quality, through the Citizens' Advisory Committee on Environmental Quality, and working with Governors and Mayors and county officials and with concerned private groups, we shall be reaching out in an effort to enlist millions of helping hands, millions of willing spirits—missions of volunteer citizens who will put to themselves the simple question: "What and can I do?"

It is in this way—with vigorous Federal leadership, with active enlistment of governments at every level, with the aid of industry and private groups, and above all with the determined participation by individual citizens in every state and every community, that we at last will succeed in restoring the kind of environment we want for ourselves, and the kind of generations that come after deserve to inherit.

This task is ours together. It summons our energy, our ingenuity and our conscience in a cause as fundamental as life itself.

RICHARD NIXON.

The White House.

EXHIBIT 2

AIR POLLUTION

We tend to view air pollution as a recently discovered phenomenon. But since the lawn of the industrial revolution, people in many communities have endured levels of smoke pollution that would be held intolerable today. In the last half of the 19th century, a surprising number of aroused citizen groups protested the smoke-laden air of London. But their protests were lost in the overwhelming

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clamor for industrial development at any price.

Progress in the United States was no more heartening. Chicago and Cincinnati passed smoke control laws in 1881. By 1912, 23 of the

28 American cities with populations over 200,000 had passed similar laws. But still there was little dent made in air pollution.

In the 1930's, 1940's, and 1950's smoke pollution reached its zenith in the United States, especially in Eastern and Midwestern industrial cities. The public outcry against these conditions resulted in the enactment of improved smoke pollution legislation, its partial enforcement, and a visible improvement in the air of some industrial cities. These local control efforts focused primarily on cutting down smoke from fossil fuels, particularly coal. The fortunate advent of diesel engines in place of steam locomotives and the increased use of gas as a fuel for space heating also helped cut back air pollution in that era.

The Donora disaster in Pennsylvania in 1948 pricked the conscience of the Nation, but the experience of Los Angeles, beginning in that same decade was a more certain sign of the complex air pollution problem which now confronts cities throughout the world. When the citizens of Los Angeles began to complain of smog, few people suspected that air pollution was a great deal more than just smoke. Los Angeles used virtually none of the fuels primarily responsible for the smoke problems of cities elsewhere; yet smog appeared and worsened. Dr. Aria J. Haagen-Smit, of the California Institute of Technology, finally pinpointed the principal sources of photochemical smog in Los Angeles—hydrocarbons and nitrogen oxides from automobile exhausts. Smog was at first thought to be a phenomenon amplified by local weather conditions and limited to Los Angeles. Today, however, most major cities are afflicted to some degree by photochemical smog as well as by other forms of air pollution.

Air pollution is for the most part a phenomenon of urban living that occurs when the capacity of the air to dilute the pollutants is overburdened. Population and industrial growth and a high degree of dependence on the motor vehicle cause new gaseous and particulate emissions to complement, interact with, and further complicate the traditional ones.

When the first Federal air pollution control legislation was passed in 1955 there were no viable ongoing State programs at all. There was little interest in the scientific community, and the public, by and large, equated air pollution with coal smoke and considered smog a problem unique to Los Angeles. It is no wonder that air pollution is regarded as a recently discovered phenomenon.

POLLUTANTS AND THEIR SOURCES

Five main classes of pollutants are pumped into the air over the United States, totaling more than 200 million tons per year. These are summarized in table 1 for 1968, the latest year for which data are available for making estimates.

Transportation—particularly the automobile—is the greatest source of air pollution. It accounts for 42 percent of all pollutants by weight. It produces major portions not only of carbon monoxide but of hydrocarbons and nitrogen oxides.

TABLE 1.—ESTIMATED NATIONWIDE EMISSIONS, 1968

[In millions of tons per year]

Source	Carbon monoxide	Particulates	Sulfur oxides	Hydrocarbons	Nitrogen oxides	Total
Transportation	63.8	1.2	0.8	16.6	8.1	90.5
Fuel combustion in stationary sources	1.9	8.9	24.4	.7	10.0	45.9
Industrial processes	9.7	7.5	7.3	4.6	.2	29.3
Solid waste disposal	7.8	1.1	.1	1.6	.6	11.2
Miscellaneous [1]	16.9	9.6	.6	8.5	1.7	37.3
Total	100.1	28.3	33.2	32.0	20.6	214.2

[1] Primarily forest fires, agricultural burning, coal waste fires.

Source: NAPCA Inventory of Air Pollutant Emissions, 1970.

Carbon monoxide (CO) is a colorless, odorless, poisonous gas, slightly lighter than air, that is produced by the incomplete burning of the carbon in fuels. Carbon monoxide emissions can be prevented by supplying enough air to insure complete combustion. When this occurs, carbon dioxide, a natural constituent of the atmosphere, is produced instead of carbon monoxide.

Almost two-thirds of the carbon monoxide emitted comes from internal combustion engines, and the overwhelming bulk of that comes from gasoline-powered motor vehicles.

Particulate matter includes particles of solid or liquid substances in a very wide range of sizes, from those that are visible as soot and smoke to particles too small to detect except under an electron microscope. Particulates may

be so small that they remain in the air for long periods and can be transported great distances by the winds. They are produced primarily by stationary fuel combustion (31 percent) and industrial processes (27 percent). Forest fires and other miscellaneous sources account for 34 percent.

There are established techniques for controlling particulates from a boiler stack or from a waste air stream—among them filtering, washing, centrifugal separation, and electrostatic precipitation. These work well for most of the particles, but complete removal, especially of the very finest particles, is technically and economically difficult.

Sulfur oxides (SOX) are acrid, corrosive, poisonous gases produced when fuel containing sulfur is burned. Electric utilities and industrial plants are its principal producers since their most abundant fuels are coal and oil, which contain sulfur as an impurity. The burning of coal produces about 60 percent of all sulfur oxides emissions, oil about 14 percent, and industrial processes that use sulfur 22 percent. Most of the coal and oil is burned in electric power generation plants. About two-thirds of the Nation's sulfur oxides are emitted in urban areas, where industry and population are concentrated. And seven industrial States in the Northeast account for almost half of the national total of sulfur oxides. In rural areas, however, sulfur oxides sources may be large industrial plants, smelters, or power plants. Any one of these may throw out several hundred thousand tons of sulfur oxides in a year.

Government agencies and industry have sought to reduce sulfur oxide emissions in three ways: switching to low sulfur fuels (those with less than 1 percent sulfur), removing sulfur from fuels entirely, and removing sulfur oxides from the combustion gases.

Hydrocarbons (HC), like carbon monoxide, represent unburned and wasted fuel. Unlike carbon monoxide, gaseous hydrocarbons at concentrations normally found in the atmosphere are not toxic, but they are a major pollutant because of their role in forming photochemical smog. More than half the estimated 32 million tons of hydrocarbons produced each year comes from transportation sources, mainly gasoline-fueled vehicles. Another 27 percent comes from miscellaneous burning and 14 percent from industrial processes. About 60 percent is produced in urban areas, largely because there are more automobiles.

Nitrogen oxides (NO_x) are produced when fuel is burned at very high temperatures. Stationary combustion plants produce 49 percent of the nitrogen oxide emissions; transportation vehicles, 39 percent; and all other sources, 12 percent.

Internal combustion engines operate at very high temperatures, and so do efficient, large electric power and industrial boilers. Nitrogen that is ordinarily inert combines with oxygen in high temperature flames and tends to stay combined if the exhaust gases are cooled too quickly. The control of NO_x from stationary sources requires careful adjustment of flame and stack gas temperatures. Control of nitrogen oxides from automobiles is more difficult because reducing other pollutants can increase the output of NO_x.

Under the influence of sunlight, nitrogen oxides combine with gaseous hydrocarbons to form a complex variety of secondary pollutants called *photochemical oxidants*. These oxidants, together with solid and liquid particles in the air, make up what is commonly known as smog. The photochemical oxidant family of pollutants includes, among others, ozone, an unstable, toxic form of oxygen; nitrogen dioxide; peroxyacyl nitrates; aldehydes; and acrolein. In air they can cause eye and lung irritation, damage to vegetation, offensive odor, and thick haze.

Air pollution emissions in the United States, 1968

[Percentage by weight]

What they are:	
Sulfur oxides	15
Hydrocarbons	15
Particulates	13
Nitrogen oxides	10
Carbon monoxide	47
Where they come from:	
Fuel combustion in stationary sources	21
Solid waste disposal	5
Forest fires	8
Miscellaneous	10
Industrial processes	14
Transportation	42

Source: National Air Pollution Control Administration, HEW.

WHAT AIR POLLUTION DOES

Air pollution adversely affects man and his environment in many ways. It soils his home and interferes with the growth of plants and shrubs. It diminishes the value of his agricultural products. It obscures his view and adds unpleasant smells to his environment. Most important, it endangers his health.

The extent of air pollution depends heavily on how weather disposes of the pollutants. The ability of the atmosphere to dilute and disperse them is limited to two factors—wind speed and the depth in the atmosphere to which air near the surface can be mixed. Although considerable variation occurs from day to day in the extent to which these factors disperse air pollution, the same patterns tend

to repeat themselves over months or years. On some few days in a year, strong winds and highly unstable atmospheric conditions may disperse even the heaviest blanket of pollution. On many other days, weak winds and highly stable conditions let small quantities of pollutants accumulate and build up to serious proportions. Between these extremes, variations in weather condi-

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tions create varying levels of pollution over a given area.

Many cities lie in natural basins at the confluence of rivers, around bays, or in flat areas backed against mountains. Such basins are natural gathering places for low-lying masses of warm air, which trap pollutants in the familiar phenomenon known as an "inversion." However, even communities more favorably located increasingly find that atmospheric conditions limit the amount of air available as a dumping place for pollutants.

To human health

The most important effect of air pollution is its threat to human health. Acute episodes of pollution in London, New York, and other cities have been marked by dramatic increases in death and illness rates, especially among the elderly and those with preexisting respiratory or cardiac conditions.

The incident most familiar to Americans occurred in 1948 in Donora, an industrial town in the mountains of western Pennsylvania. Almost half of the town's 14,000 inhabitants fell ill; 20 died. The worst air pollution disaster of modern times struck in London in 1952 when its famous "killer smog" increased the number of deaths in London to 1,600 more than would have normally occurred. Both of those episodes occurred when, under conditions lasting for several days, unusual weather prevented the dispersal of pollutants.

Such major disasters are cause for concern. However, of much greater significance for the American population are the subtle, long-range effects on human health of exposure to low-level, long-lasting pollution.

The causes of chronic diseases which constitute the major public health problems of our time are difficult to determine. Assessing the contribution of particular pollutants to these conditions is complicated by the seemingly infinite variety of pollutants to which persons, particularly those in urban areas, are exposed from the day of their birth. And it is difficult to separate pollution from the other biological and physical stresses to which people are subjected.

Nonetheless, it is well established that air pollution contributes to the incidence of such chronic diseases as emphysema, bronchitis, and other respiratory ailments. Polluted air is also linked to higher mortality rates from other causes, including cancer and arteriosclerotic heart disease. Smokers living in polluted cities have a much higher rate of lung cancer than smokers in rural areas.

The incidence of chronic diseases has soared sharply during this century, while the infectious diseases which were the primary public health concern in the past have been brought under control. Heart and blood vessel diseases caused more than half the deaths in the United States in 1962. Lung cancer, once a rarity, now kills more persons than all other cancer types combined. Emphysema has doubled every 5 years since World War II. Air pollution has been linked to asthma, acute respiratory infections, allergies, and other ailments in children. Such childhood diseases may well underlie chronic ills developed in later life.

Knowledge of the health effects of specific contaminants present in the air is far from complete. However, the more overt health effects of several major classes of pollutants are beginning to be defined. Those pollutants are found almost everywhere in the United States.

When *carbon monoxide* is inhaled, it displaces the oxygen in the blood and reduces the amount carried to the body tissues. At levels commonly found in city air, it can slow the reactions of even the healthiest persons, making them more prone to accidents. Moreover, it is believed to impose an extra burden on those already suffering from anemia, diseases of the heart and blood vessels, chronic lung disease, overactive thyroid, or even simple fever. Cigarette smokers, who are already inhaling significant amounts of CO in tobacco smoke, take on an additional CO burden from polluted air.

Studies show that exposure to 10 parts per million of CO for approximately 8 hours may dull mental performance. Such levels of carbon monoxide are commonly found in cities throughout the world. In heavy traffic situations, levels of 70, 80, or 100 parts per million are not uncommon for short periods.

Sulfur oxides, produced mainly by burning coal and oil, can cause temporary and permanent injury to the respiratory system. When particulate matter is inhaled with the sulfur oxides, health damage increases significantly. The air pollution disasters of recent years were due primarily to sharply increased levels of sulfur oxides and particulates.

Sulfur dioxide can irritate the upper respiratory tract. Carried into the lungs on particles, it can injure delicate tissue. Sulfuric acid—formed from sulfur trioxide when water is present—can penetrate deep into the lungs and damage tissue.

Health may be imperiled when the annual mean concentration of sulfur dioxide in the air rises above 0.04 parts per million. Deaths

from bronchitis and from lung cancer may increase when this level of sulfur dioxide is accompanied by smoke concentrations of about 0.06 parts per million. American cities often exceed this annual mean substantially. The annual mean concentration of SO_2 in the air was 0.12 parts per million in Chicago in 1968; in Philadelphia it was 0.08. When SO_2 exceeds 0.11 parts per million for 3 to 4 days, adverse health effects have been observed, and this level is reached in many large cities during inversions.

Photochemical oxidants have emerged relatively recently as a major health problem, and research relating to their effects on human health is still in its infancy. However, studies have shown that eye irritation begins when peak oxidant levels reach 0.10 parts per million. Increased frequency of asthma attacks occurs in some patients on those days when hourly concentrations average 0.05 to 0.06 parts per million. Even the healthiest persons may be affected; however, a study of cross-country runners in a Los Angeles high school showed that their performances suffered when hourly average oxidant levels ranged from 0.03 to 0.30 parts per million.

Less is known about the effects on health of *nitrogen oxides*, which play such an important part in producing photochemical pollution. They have been little studied until recently. However, evidence so far suggests that they may be harmful to human health. A study in Chattanooga, Tenn., linked very low levels to these oxides in the air to children's susceptibility to Asian flu.

The lowest *particulate levels* at which health effects have been noted in the United States were reported at Buffalo. The Buffalo study suggests that the overall death rate rises in areas with an annual average concentration ranging from 80 to 100 micrograms per cubic meter. The study also reveals a tie between these levels of particulate matter and gastric cancer in men 50 to 69 years old. A similar association was found in a Nashville study. Particulate levels in this range are found in most major urban areas and are common even in smaller industrial cities.

The findings relating to particulate matter, as a class of pollutants, amply justify measures to reduce their level in the air. Included in this class of pollutants are a number of substances which are potential health hazards at much lower concentrations and which will require even more stringent controls.

Beryllium, for example, which may be emitted from industrial sources and from rocket fuel, can cause lesions in the lung, producing serious respiratory damage and even death. Since the sources of this pollutant are limited, however, it may be a problem only in specific localities.

Asbestos, long recognized as an occupational hazard, is increasingly present in the ambient air because of its use in construction materials, brake linings, and other products. Long exposure in industry produces the lung-scarring disease, asbestosis. On the other hand, mesothelioma, a type of lung cancer associated almost exclusively with asbestos exposure, does not appear to be associated only with heavy or continued exposure.

Many other particulate pollutants are a growing public health worry even though they may not constitute such an immediate and direct threat. Current studies suggest that lead levels now found in the blood and urine of urban populations—although well below those associated with classic lead poisoning—may interfere with the ability of the human body to produce blood. As air pollution becomes more widespread, increased numbers of people are being exposed to airborne lead, chiefly from automotive emissions, at levels formerly found only in congested areas.

To vegetation and materials

Air pollution inflicts widespread and costly damage on plant life and buildings and materials. Some experiences of the past warned of the effects of air pollution on plant life. Sulfur dioxide fumes from a large copper smelting plant set up after the Civil War in Copper Basin, Tenn., damaged 30,000 acres of timberland. Much of this originally forested mountain land is still barren. Today, the damage to plant li"e is less dramatic than in the days of unrestricted smelter operations. But the slower, chronic injury inflicted on agricultural, forest, and ornamental vegetation by increasing quantities and varieties of air pollutants has now spread to all parts of the country.

Smog in the Los Angeles basin contributes to the slow decline of citrus groves south of the city and damages trees in the San Bernardino National Forest 50 miles away. Fluoride and sulfur oxides, released into the air by phosphate fertilizer processing in Florida, have blighted large numbers of pines and citrus orchards. Livestock grazing on fluoride-tainted vegetation develop a crippling condition known as fluorosis. In New Jersey, pollution injury to vegetation has been observed in every county and damage reported to at least 35 commercial crops.

At sulfur oxide levels routinely observed in some of our cities, many plants suffer a chronic injury described as "early aging." Nitrogen dioxide produces similar injury symptoms and seems to restrict the growth of plants even when symptoms of injury are not visible. Ozone, a major photochemical oxidant, is a significant threat to leafy vegetables, field and forage crops, shrubs, and fruit and forest trees—particularly conifers. The damage from ozone in minute quantities can be great. Extended ozone exposure to 0.05 parts per million

can reduce a radish yield 50 percent. Tobacco is sensitive to ozone at a level of 0.03 parts per million.

Air pollutants also damage a wide variety of materials. Sulfur oxides will destroy even the most durable products. Steel corrodes two to four times faster in urban industrial areas than it does in rural areas where much less sulfur-bearing coal and oil are burned. When particulate matter is also present in the air, the corrosion rates multiply. One-third of the replacement cost of steel rails in England is estimated to be caused by sulfur pollution. The rise of sulfur oxides levels in the air is accelerating the erosion of statuary and buildings throughout the world, and in some cities, works of art made of stone, bronze, and steel must be moved indoors to preserve them from deterioration. Particulate matter in the air not only speeds the corrosive action of other pollutants but

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by itself is responsible for costly damage and soiling. Clothes and cars must be washed, houses painted, and buildings cleaned more often because of the particulates in the air. Ozone damages textiles, discolors dyes, and greatly accelerates the cracking of rubber.

To visibility

Air pollution dims visibility, obscures city skylines and scenic beauty, interferes with the safe operation of aircraft and automobiles, and disrupts transportation schedules. In one recent year, low visibility from smoke, haze, and dust was the suspected cause of 15 to 20 plane crashes. In Los Angeles, visibility in the smog frequently lowers to less than 3 miles. During the air pollution alert in the eastern States during July 1970, visibility was almost totally obscured in some areas. The Federal Aviation Administration's visibility safety factor for airplane operation without instruments is 5 miles. Nitrogen dioxide, which reaches peak levels during morning rush-hour traffic, is responsible for the whiskey-brown haze that stains the sky over many cities. Particulates, however, are the major villain in reducing visibility. Particles (ash, carbon, dust, and liquid particles) discharged directly to the air scatter and absorb light, reducing the contrast between objects and their backgrounds. Particles are also formed in the atmosphere by photochemical reactions and by the conversion of sulfur dioxide to sulfuric acid mist. Wherever sulfur pollution is significant — which is wherever large amounts of coal and oil are burned— visibility diminishes as relative humidity rises.

To climate

Air pollution alters climate and may produce global changes in temperature. Chapter V of this report deals with that subject.

WHAT AIR POLLUTION COSTS

In damages

The total costs of air pollution in the United States cannot be precisely calculated, but they amount to many billions of dollars a year. Economic studies are beginning to identify some of the more obvious costs. To paint steel structures damaged by air pollution runs an estimated $100 million a year. Commercial laundering, cleaning, and dyeing of fabrics soiled by air pollution costs about $800 million. Washing cars dirtied by air pollution costs about $240 million. Damage to agricultural crops and livestock is put at $500 million a year or more. Adverse effects of air pollution on air travel cost from $40 to $80 million a year. Even more difficult to tie down are the costs of replacing and protecting precision instruments or maintaining cleanliness in the production of foods, beverages, and other consumables. It is equally difficult to assess damage, soiling, and added maintenance to homes and furnishings or how air pollution acts on property values. The cost of fuels wasted in incomplete combustion and of valuable and potentially recoverable resources such as sulfur wasted into the air is also hard to count. It is still more difficult to determine the dollar value of medical costs and time lost from work because of air pollution—or to calculate the resulting fall in productivity of business and industry.

In control

The total investment necessary through 1975 to control the major industrial and municipal sources of particulate matter, sulfur oxides, hydrocarbons, and carbon monoxide in 100 metropolitan areas of the United States has been estimated at $2.6 billion. This includes costs for controlling both existing and new sources. By 1975, it will cost another $1.9 billion for operation, maintenance, depreciation, and interest.

These estimated costs are based on assumed future control requirements. Still, the yearly cost to control the industrial sources of these four major pollutants is relatively low, less than 1 percent of the value of the annual output of the industries involved, although the costs to some industries are much greater.

According to industry estimates, the costs

of control devices to meet Federal motor vehicle emission standards are rising rapidly, both because of general increases in prices and because of the increasing stringency of the standards. The cost for 1968 and 1969 models was $18–19 per car; for 1970, $36 per car; and for 1971 models it is estimated at $49 per car. The application of more stringent standards will increase these costs still further. Thus in 1971 the cost for installing control devices on the 10 million new cars produced will be almost $500 million. However, assuming that the average vehicle life is 10 years, the cost is only $5 per car per year.

PROGRAMS IN AIR POLLUTION CONTROL

Legislative history

The first Federal legislation concerned exclusively with air pollution was enacted in July 1955. It authorized $5 million annually to the Public Health Service of the Department of Health, Education and Welfare for research, data collection, and technical assistance to State and local governments.

Pressures for action led to the Clean Air Act of 1963. It provided grants to air pollution agencies for control programs (with special bonuses for intermunicipal or interstate areas). And it provided Federal enforcement authority to attack interstate air pollution problems.

In October 1965, the Clean Air Act was amended to permit national regulation of air pollution from new motor vehicles. The first standards were applied to 1968 models. These standards were tightened for 1970 and 1971 model cars. And even more stringent standards have been announced for 1973 and 1975.

In November 1967, the Congress passed the comprehensive Air Quality Act, which undergirds much of the current Federal air pollution control effort. That act set in motion a new regional approach to establishing and enforcing Federal-State air quality standards:

The Secretary of HEW first must designate air quality control regions within a State or within an interstate region.

The Secretary must promulgate air quality criteria which, based on scientific studies, describe the harmful effects of an air pollutant on health, vegetation, and materials. He must issue control technology documents showing availability, costs and effectiveness of prevention and control techniques.

In the designated regions, the States must show willingness to establish air quality standards.

The States then set standards limiting the levels of the pollutant described in the criteria and control technology documents. If the States fail to do this, the Secretary is empowered to set the standards.

After the States have developed air quality standards, they must establish comprehensive plans for implementing them. (These plans should set specific emission levels by source and a timetable for achieving compliance.)

The process of adopting standards and implementation plans can take up to a year and a half, and the approval process requires still more time. The process must be renewed and repeated each time criteria and control techniques are issued for a new pollutant.

On February 10, 1970, the President made a number of legislative proposals to improve the air quality program. Among them were proposals to apply air quality standards throughout the entire Nation, not just within the air quality control regions. Hearings are provided for, and the States have the option of adopting more stringent standards if they choose. The States would have 9 months from the time the national standards are established to submit a plan detailing how they would enforce the national standards, including the associated emission standards. The Federal Government would enforce the standards if the air quality in a State or region fell below the standards and the State plan was not being carried out. The provisions for national standards should markedly quicken the process of establishing enforceable standards and a workable plan for abatement.

The President's proposals also call for national emission standards for new pollutant sources considered harmful to health and welfare and which can be controlled. This authority is necessary to insure that new stationary sources are designed to reduce emissions to the lowest level consistent with available technology. National emission standards would apply to existing as well as to new stationary sources for pollutants extremely hazardous to health, such as asbestos, cadmium, or beryllium. The legislation would authorize the Secretary of HEW to move directly against sources of these pollutants when States do not act.

The President's program would also extend Federal enforcement authority to pollution within one State. And it would levy fines of up to $10,000 a day for noncompliance.

The Department of HEW first issued documents on air quality criteria and control methods for sulfur oxides and particulate matter in February 1969. This triggered the standards-setting process for these two key pollutants. In March 1970, criteria and control

documents were issued for carbon monoxide, hydrocarbons, and photochemical oxidants. HEW expects to issue documents on lead, nitrogen oxides, fluorides, and polynuclear organic compounds early in 1971.

By July 1, 1970, air quality regions had been designated in 10 major metropolitan areas. By the end of the summer 1970, HEW expects to designate 90 regions, providing at least one region in each State. These regions will embrace 123 million people, almost 60 percent of the U.S. population. As of July 1, 1970, 17 States had submitted standards to the Department, and 10 had been approved. No implementation plans have yet been approved.

Action on each new pollutant requires publication of air quality criteria and control technology, the development and approval of State standards for each region, and the development and approval of State implementation plans for each region. The National Air Pollution Control Administration (NAPCA) is currently studying 30 different pollutants to determine their potential effects on health. When the evaluations are completed, criteria documents will be issued, as necessary.

Federal abatement actions

Although the major current emphasis is on developing standards, some action continues under the enforcement provisions of the 1963 Clean Air Act. Since passage of the act, 10 enforcement conferences have been held. Four have dealt with single sources of pollution; six have considered all sources of pollution within major metropolitan areas, including the metropolitan areas of New York-New Jersey, Kansas City, and Washington, D.C.

Those conferences covering whole metropolitan areas have concentrated more on strengthening State and local efforts than on directly curbing polluters. The conference-public hearing procedure has been a cumbersome and time-consuming method of taking action against individual polluters.

The first air pollution enforcement action was instituted in 1965 against a chicken rendering plant in Bishop, Md. A conference was held in 1965 and a public hearing in 1967; a suit was begun in the Federal district court in 1969, and an appeal finally made to the U.S. Supreme Court. The plant was not shut

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down until the Supreme Court refused to hear the appeal in May 1970—5 years after the action started. No other enforcement action has proceeded beyond the conference stage.

No enforcement has yet taken place under the 1967 act, since the standards, for the most part, have not yet been adopted nor implementation plans approved. The President has submitted comprehensive proposals to the Congress to strengthen enforcement powers. These are discussed later in the chapter.

Curbing auto pollution

The first standards set under the 1965 Amendments to the Clean Air Act applied to 1968 model vehicles. These standards required complete control of crankcase hydrocarbons and partial control of exhaust hydrocarbons and carbon monoxide.

In June 1968, HEW tightened exhaust standards for 1970 and later model vehicles and for the first time set evaporative loss standards—to be applied starting with the 1971 model year.

In July 1970, the Secretary proposed sweeping changes in procedures for testing whether new automobiles meet the Federal emission standards—when it was discovered that the existing procedures underestimated the actual amount of pollution being emitted. The new test procedures would take effect when prototypes of 1972 model cars begin their tests at the end of this year. At the same time, the Secretary confirmed the same 1975 standards for hydrocarbons and carbon monoxide and said that the nitrogen oxide and particulate standards proposed in February 1970 would be confirmed as soon as test procedures for these standards had been developed. Table 2 summarizes the effects of all these standards on automobile emissions through 1975.

Under the 1965 Amendments to the Clean Air Act, NAPCA tests only vehicles submitted by a manufacturer. If the test vehicle meets the Federal standards, all other like model vehicles sold by a manufacturer are deemed in conformity with the standards.

The first surveillance data on production line cars subject to the Federal standards were reported in the summer of 1968. The data showed that, on the average, the cars complied with the Federal standards. However, by the winter of 1969, the surveillance data showed that, on the average, hydrocarbon emissions of 1968 cars ran about 20 percent above the standard and carbon monoxide emissions about 8 percent above. Reports in 1970 show hydrocarbon emissions higher than the standard by 25 percent and carbon monoxide by about 10 percent.

TABLE 2.—EXHAUST EMISSION STANDARDS AND UNCONTROLLED VEHICLE EMISSION LEVELS BASED ON CURRENT AND PROPOSED 1972 TEST PROCEDURES

PRESENT TEST PROCEDURE

	Hydrocarbons		Carbon monoxide		Oxides of nitrogen		Particulates	
	G./mi.[1]	Percent [2]	G./mi.	Percent	G./mi.	Percent	G./mi.	Percent
Baseline (uncontrolled vehicle)	11.2		73.0					
Present standards (intended degree of control)	2.2	80	23.0	69	[3] N.A.	N.A.	N.A.	N.A.
1975 standards (expected control)	.5	96	11.0	86				
PROPOSED TEST PROCEDURE								
Baseline (uncontrolled vehicle)	14.6		116.3		6.0		0.3	
Equivalent present standards (achieved degree of control)	4.6	69	47.0	60				
Proposed 1972 Standards (control)	2.9	80	37.0	69				
Proposed 1973 standards (control)					3.0	50		
Proposed 1975 standards (control)	.5	97	11.0	91	.9	85	.1	66.7

[1] Grams per mile emitted.
[2] Percentage reduction from uncontrolled vehicle.
[3] No standards applicable.

Source: NAPCA.

Remedies for the failure of production line cars to perform as well as their prototypes are both administrative and legislative. New tests to be applied for the first time to 1972 models include a revised durability test. It will more accurately reflect actual operating conditions. And the manufacturer will be required to make available to NAPCA test cars to be under the control of the Federal Government in accumulating durability mileage.

Proposed Presidential amendments to the Clean Air Act would authorize HEW to withdraw approval of a particular model of car if vehicles coming off the production lines do not meet the Federal standards. Moreover, the Secretary of HEW would be explicitly authorized to test, or require manufacturers to test, vehicles at the end of production lines. Even with these safeguards, many automobiles will not meet the standards. In addition to systems that break down or are not sufficiently durable, the car owner may not provide proper maintenance.

The data on present levels of pollution in our urban environment, the projected increase in urban traffic in the years ahead, and the performance of pollution control systems under actual driving conditions make it clear that even applying stricter standards in 1975 will only prolong the downward curve in vehicle emissions until the middle 1980's. After that, carbon monoxide levels will again rise because of the sheer number of automobiles on the roads and highways.

Motor vehicle pollution is the product of a complex combustion system of engines, fuels, and fuel additives. Effective control, then, means dealing not only with engines and control devices but with the fuel itself and with fuel additives. The President's proposed legislation includes authority to establish standards and regulations for both fuel and fuel additives.

The key additive from an air pollution control viewpoint is tetraethyl lead in gasoline. It accounts for a significant portion of the particulate pollution from automobiles. Most experts believe that control systems incorporating chemical catalysts will be required to meet 1975 standards. Experience to date indicates that lead in gasoline poses serious problems to the use of catalytic control devices. Although other control methods are likely to be available, the catalyst appears to be most economical and durable. A panel of the Commerce Technical Advisory Board concluded that lead-free gasoline should be ready within the next few years so that industry will have the chance to road-test these catalytic devices. Automobile manufacturers say that they intend to market vehicles with low-octane requirements in their 1971 models, thus reducing or even eliminating the need for lead in gasoline.

The Secretary of HEW has asked the chief

executives of the Nation's petroleum companies to work toward production of a lead-free gasoline. The Secretary suggested a plan to reduce lead levels in regular grades to 0.5 gram per gallon by July 1, 1971, and to zero lead content by July 1, 1974. However, since premium gasoline containing lead will still be needed for a number of years to meet the requirements of high compression engines in older cars, the Secretary's plan provides for leaded premium gasoline as long as it is needed. To make the new gasolines competitive, the administration has requested a $4.25 per pound tax on lead used in gasoline.

An alternative to the internal combustion engine may be necessary if it cannot meet the increasingly stiff standards. The President announced in his February 10, 1970, environmental message a program to develop one or more alternatives within 5 years. He called for:

An extensive research and development program to be conducted under the general direction of the Council on Environmental Quality;

An incentive program to private developers, through Government purchase of privately produced unconventional vehicles for testing and evaluation.

Controlling sulfur oxides

Sulfur oxides are one of the most difficult classes of air pollutants to control. Because of their toxicity and pervasiveness, they are among the most dangerous air pollutants to human health and are clearly the most harmful to vegetation, buildings, and materials. Because their source is chiefly the electric power industry, their potential increase is tied to the burgeoning industry, which almost doubles its output every 10 years.

At present about 65 percent of the energy for generating electricity stems from coal; gas, oil, and hydroelectric sources account for about 34 percent; and nuclear energy the remaining 1 percent. By 1980, 22 percent of the total installed electric power capacity is expected to be nuclear. By 1990, it will be 40 percent. However, by far the greatest source of energy is now, and will continue to be for the rest of this century, the burning of coal and oil. The amount of coal used for power by the year 2000 will be four times greater than it is today.

A number of alternatives are available to control sulfur oxide pollution over the next decade. Switching fuels is possible, but only when an alternative, low-sulfur fuel is available. Most coal near the Nation's centers of population and power demand is high in sulfur. Low-sulfur coal not only is far away but also commands a higher price for use as coke by domestic and foreign steelmakers. North Africa and other areas are rich in low sulfur oil but are limited by low production and refinery capabilities. Oil import quotas bar it from certain areas of the Midwest and the West Coast, although the oil may be imported to other areas of the United States. The United States will probably continue to rely primarily on residual oil from the Western Hemisphere. And that oil will have to be desulfurized before it is used. Natural gas carries an insignificant sulfur content, but it is the scarcest of fossil fuels, and most of it is being conserved for nonpower purposes.

Sulfur can be separated from coal and oil, but the processes are costly, and some are not fully developed technically. Methods to remove sulfur from the stack gases after the fuel is burned are under development. However, none of these processes is yet in large-scale use and the costs are not yet known. Some of the stack control processes recover sulfur or a sulfur byproduct, which can be sold to help offset costs. Some are also being evaluated for their potential in reducing pollution from nitrogen oxides.

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Research and development

A number of technological and research gaps in controlling air pollution still exist. NAPCA carries on an extensive research, development, and demonstration program in its own facilities and through grants and contracts. The fiscal year 1970 budget contains $59.3 million in budgeted funds for research and demonstration. The fiscal year 1971 budget requests call for $63.3 million.

Two principal areas hold high priority. One is the development of technology for the control of stationary sources. Currently, a comprehensive program is underway in NAPCA, working with the Bureau of Mines and TVA, aimed at perfecting techniques for controlling sulfur oxides. A similar program is getting underway for nitrogen oxides. The second prime priority is the development of new low emission power systems for motor vehicles. This program aims to develop at least two unconventional vehicle prototypes and to demonstrate commercial feasibility by 1975. Initial research will center on gas turbine, steam, and hybrid systems, with continued work on electrical systems. The 1971 Federal Budget sets aside $9 million for this program. The Council on Environmental Quality has worked closely with the Department of Health, Education, and Welfare, which is the lead agency for this program, and with other Federal agencies to assure that the widest range of Federal talents is enlisted in the low-emission power program. The Council has also appointed a committee to advise it on this program, headed by Dr. Ernest Starkman, of the University of California at Berkeley.

Air quality monitoring

Collecting and evaluating data on air pollutant emissions and air quality require a joint Federal-State-local effort. NAPCA is now engaged not only in operating its own air monitoring network but also in supporting State and local monitoring activities. NAPCA's own air monitoring program involves operation of more than a thousand air sampling devices at stations across the country, including six continuous monitoring stations in major cities. Over the past year, mechanized devices for measuring various gaseous pollutants were put in operation at 145 sites. This expansion of NAPCA's network reflects the increased stress on gathering data for air pollutants which have been or will be the subject of air quality criteria documents.

State and local governments, which have the primary responsibility for monitoring air quality, operate over 2,000 stations. Most of them, however, monitor air quality only intermittently.

State and local programs

With one major exception—new motor vehicles, whose control the Clean Air Act preempts to the Federal Government—primary responsibility for the control of the sources of air pollution is assigned to State and local governments. An assessment, then, of State and local air pollution control programs is a useful measure of the current efforts to cope with the problem.

A March 1970 Department of Health, Education, and Welfare report to the Congress, "Progress in the Prevention and Control of Air Pollution," traces the considerable increase in State and local budgets for air pollution control, stimulated in large part of the Federal matching grants program initiated in 1963. However, of the 55 State and territorial programs being financed by the grants program in 1970, only six have reached an annual per capita expenditure of 25 cents, which is generally considered the minimum expenditure needed for State programs. Only 23, including the six, are spending as much as 10 cents per person per year. At the local level, the situation is better: 64 of 144 grantee agencies are spending at least 40 cents per capita per year, which is generally considered the minimum needed for local programs.

Table 3, also from the March 1970 HEW progress report, shows the accelerated pace at which States have been adopting air pollution control regulations during the last several years. Prior to passage of the Clean Air Act in 1963, only nine States had adopted air pollution control regulations. By 1967–68, 30 had. By the end of 1970 it is expected that all States will have established the legal basis for controlling the sources of air pollution.

No detailed survey has been made of the adoption of air pollution regulations at the local level of government. However, local agencies set up to deal with the problem have proliferated—from 85 agencies in 1962 to more than 200 today.

TABLE 3.—STATE LAWS AND REGULATIONS

[Number of States enacting laws and regulations in specified years]

	1951–62	1963–64	1965–66	1967–68	Total
Initial law enacted	11	3	9	23	46
First regulation adopted	9	------	4	17	30
Type of regulation:					
Administrative	9	------	4	13	26
Fuel burning	2	------	3	11	16
Open burning	4	------	3	12	19
Ambient standards	2	1	1	11	15
Visible emissions	5	------	3	14	22
Incinerator	1	1	2	13	17
Industrial process	----------	1	4	9	14
Vehicle	1	----------	----------	5	6
Sulfur oxides	----------	----------	1	5	6

Perhaps the most significant indicator of the adequacy of State and local air pollution control programs is manpower. The 1970 HEW report to the Congress, "Manpower and Training Needs for Air Pollution Control," indicates that in general control agencies are inadequately staffed. Fifty percent of State agencies have fewer than 10 positions budgeted, and 50 percent of local agencies have fewer than seven positions budgeted. Further, during 1969 the vacancy rate for all agencies was 20 percent. Recruitment of competent personnel is difficult. The report estimates that by 1974 State and local agencies will need 8,000 personnel if they are to implement the Clean Air Act properly—a jump of 300 percent over the the number of persons currently employed in these programs.

The chief difficulty is the low salary rates paid by State and local agencies. The HEW report cites a study which indicates that State and local median salaries fall 20 to 50 percent below the median paid by industry for comparable positions.

EVALUATION

In evaluating the effectiveness of air quality efforts, it is useful to separate stationary from mobile sources, since the methods of control and the implementing institutions are so different. It is also useful, for purposes of perspective, to compare air quality and water quality efforts on stationary sources, since many aspects of the Federal legislation are similar.

Stationary sources

Congressional and public concern focused on water pollution many years before air pollution. The first permanent water pollution legislation was enacted in 1956, the first permanent air pollution legislation not until 1963. There are currently standards and implementation plans for almost all the interstate and coastal waters of the United States, covering most forms of water pollution. Water quality criteria have been developed, and Federal, State, and local governments and industry are beginning to commit themselves to abatement programs.

In contrast, only five air pollution criteria have been issued; only 10 State standards have been approved, and no State implementation plans have yet been approved. There is currently no basis for enforcing standards because enforcement must await approval of implementation plans.

The air pollution effort is not as advanced as water pollution in terms of stationary sources for three major reasons. First, there is no available technology for a number of air pollutants, although most forms of industrial water pollution are amenable to control. Second, State water pollution control agencies have existed for many years in the United States and have developed capabilities, although often limited. Until enactment of the Air Quality Act of 1967, air pollution control was largely conducted by local agencies. Few States had adequate manpower and resources. Finally, the Air Quality Act of 1967 is no longer an adequate tool to cope with current pollution problems. Procedures for development and implementation of air quality standards are too slow and place an inordinate burden on both the States and the Federal Government.

The current enforcement authority is also inadequate. As with water pollution, the Federal Government has no jurisdiction if the pollution from one State is not endangering health and welfare in another State, unless the Governor of the State in which the pollution occurs requests help. The current conference-hearing procedure is unduly cumbersome and time consuming. The only court action that can be requested by the Government against a polluter is a cease-and-desist order, and the only available remedy in the case of noncompliance is to hold the polluter in contempt of court. The current act does not provide for fines to compel compliance.

Mobile sources

The attack on pollution from automotive emissions has begun to make progress. Current standards have already reduced emissions, and the 1973 and 1975 standards are expected to bring a further marked decrease. As discussed earlier, however, control systems on vehicles sold to the public lose their effectiveness more rapidly than on test vehicles, and, accordingly, the goals may not be met. Also, the current program does not deal with the millions of cars on the road with no control systems at all or with systems that do not or will not meet the required standards.

Monitoring

Although air pollution monitoring has been underway for years, the current systems—Federal, State, and local—are so spotty in coverage that it is very difficult to determine trends in the quality of air. For example, sampling stations are generally in downtown areas. The deterioration of air quality away from these regions, where the greatest amount of industrialization and urbanization has been taking place, is often not even monitored. Often trend data indicate improvement in one pollutant, while other pollutants not measured in the same city are increasing. Clearly, the total level of pollutants in our major urban areas continues to be above levels at which adverse effects on human health and destruction of vegetation, buildings, and materials occur. But improved monitoring systems are necessary to understand the status and trends of air quality and to develop better control programs.

State and local programs

As discussed earlier, until enactment of the Air Quality Act of 1967, air pollution was carried on largely by local agencies. The expenditures by State government were only $1.1 million in 1961. Even under the stimulation of Federal grants, State air pollution control agencies spent only $9.6 million in 1970, compared to $17.2 million for local air pollution control agencies and about $36 million for State water pollution agencies.

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NAPCA considers inadequate some 28 to 34 State programs for areas not under the jurisdiction of a local agency. Some 14 to 20 are considered adequate or progressing rapidly, and only two to four are considered good. Local and regional programs are doing better, with 44 percent of the agencies spending what NAPCA considers adequate for a minimal program.

WHAT NEEDS TO BE DONE

The Council on Environmental Quality recommends the following:

1. *The President's legislative program should be enacted to deal more effectively with stationary sources by setting national air quality standards and national emission standards on substances harmful to health, by streamlining*

enforcement procedures, and by providing fines of up to $10,000 a day.

2. *If the President's legislative program is enacted, the major Federal efforts on stationary sources should be directed toward the prompt establishment of national air quality standards covering a wide range of pollutants, and toward development of emission control limits for harmful pollutants such as asbestos, beryllium, cadmium, and other toxic materials.*

3. *Programs must be developed to improve State and local control agencies.* Highest priority should be given to increasing personnel, monitoring, and other control and enforcement activities. The recently developed program of assigning Federal personnel to the agencies is a positive step. But greatly expanded training efforts and higher pay are necessary to provide the personnel needed for effective air quality management.

4. *Federal research and development on sulfur oxides and nitrogen oxide control technology should be accelerated.* Sulfur oxides control technology for large coal- and oil-fired powerplants should be demonstrated in actual operation so that the technology can be applied throughout the industry. Both government and industry share responsibilities for this. Studies of better combustion methods to reduce oxides of nitrogen are also needed.

5. *A more balanced research and development program is necessary to hasten the development of more efficient energy processes.* Although control technology for sulfur oxides will provide appreciable improvement for several decades, a longrun answer to this type of air pollution lies in better energy conversion processes which will emit less pollutants per unit of energy produced. Gasfield coal, fluidized bed combustion, breeder reactors, and nuclear fusion all hold promise. Although research for new nuclear power sources have already received significant support, greater attention must be given to these other processes. Even now, the Nation needs to use its fuel resources more effectively through development of a national energy policy. Such a policy would guide the use of natural gas, low-sulfur coal and oil, and other energy resources to assure their availability and minimize air pollution.

6. *Incentives to accelerate industry support for research and to stimulate corrective actions should be considered.* Specifically, incentives might encourage increased research by the electric power industry to develop better control methods and new types of power that are less polluting. Other incentives could encourage a shift to techniques which would reduce pollution from combustion processes.

7. *The President's legislative proposals for regulating fuel and fuel additives, taxing lead to be used in gasoline, and testing emission systems on the production line are critical for meeting motor vehicle emission standards and should be enacted.*

8. *Alternatives available to assure continued control of motor vehicle emissions under actual road conditions should be evaluated.* Some alternatives include warranty of system effectiveness by the manufacturer, incentives to States to check vehicle emissions as part of their automobile inspection procedures, and development of more foolproof emission control systems as a prerequisite for Federal certification.

9. *The development and widespread testing of an inexpensive and effective emission control system for installation on used cars should be accelerated. Consideration should be given to requiring its use on all automobiles or on vehicles in areas with severe pollution problems.*

10. *The program for development of an unconventional vehicles propulsion system (e.g., steam, gas turbine, or hybrid) should be accelerated to assure that the technology will be available if conventional propulsion systems are incapable of meeting increasingly stringent Federal standards.*

11. *Increased research should be conducted on the development of transportation systems that not only move people and goods efficiently but also help reduce both dependency on the private car and, with it, air pollution.* Although the principal goal of mass transit is more efficient transportation, it is also a method to reduce air pollution. It deserves more study as such. Also, more research is necessary on the placement of roadways and traffic flow patterns as a method of minimizing air pollution.

12. *More research should be conducted on the effects of air pollutants on man.* More knowledge is especially necessary about short- and long-term health impacts of air pollutants. The number of health effect studies should be increased and a thorough evaluation made of current epidemiological evidence.

13. *Federal, State, and local monitoring programs must be improved considerably.* There is need to develop inexpensive automated instruments to monitor air pollution. More monitoring stations, especially in areas of rapid population growth and industrialization, are vital. And standard methods of measurement need improvement.

14. *Land use planning and control should be used by State, local, and regional agencies as a method of minimizing air pollution.* Large industries and power generating facilities should be located in places where their adverse effect on the air is minimal. There is a need for State or regional agencies to review proposed power plant sites to assure that a number of environmental values, including air pollution, are considered.

15. *The United States should work toward cooperative arrangements with other nations in limiting total amounts of air pollutants emitted into the atmosphere.* Air pollution is

no longer solely a local, State, regional, or even national problem. It is ultimately an international problem and must be so recognized. As discussed in Chapter V, the addition of particulates and carbon dioxide in the atmosphere could have dramatic and long-term effects on world climate. The United States should take the initiative in forming cooperative arrangements to control air pollutants that could have widespread effects.

POTENTIAL FOR PROGRESS

During the last 15 years, much data on the health dangers from air pollution have been accumulated. During that time, progress in improving air quality has not kept pace with increased population and urbanization—except in some cities where efficiency of combustion and changes in fuel use have reduced soot.

The costs and institutional barriers to higher air quality are not as massive as in water pollution control. Abatement technology can be installed rapidly when available. Clearly the technological gaps in air pollution control must be overcome, but once breakthroughs are made, rapid progress will be possible.

The Council on Environmental Quality believes that a very high priority should be given to air pollution control. The opportunities for making significant improvements in the environment, at relatively low cost, are impressive. Indeed, the benefits which can be derived from greater control of air pollution far outweigh the costs of the control measures.

Mr. COOPER. Mr. President, the distinguished Senator from Maine (Mr. MUSKIE) has provided the Senate and the country with a concept of the pending bill and its purposes—an excellent and noble purpose, may I say. We are indebted to him for his initiative and leadership in the field of pollution control over many years.

The distinguished Senator from Delaware (Mr. BOGGS), who has been the ranking Republican member of the Subcommittee on Pollution Control for a number of years, has rendered yeoman service to the committee, to the Congress, and to the people of this country. He deserves our gratitude.

I join the Senator from Maine (Mr. MUSKIE) in saying that the work on this bill, which has characterized the work on other pollution bills, has been of the greatest interest and, I may say, the most satisfactory interest to all members of the committee. The very nature of the problem itself demands long hours of labor and the attention of each member of the committee to the intricate and delicate provisions involved in such a problem. Its immensity drew from every member his attention and his devotion in order to try to find a solution that would be fair and, more than that, would also meet the necessities of our time in the field of air pollution.

Mr. President, I cannot pay too great a tribute to the members of the staff who worked day and night with creativeness and industry to help bring this bill before the Senate.

As the Senator from Tennessee (Mr. BAKER), one of the members of the subcommittee, said, this bill is far reaching and may be as profound in its impact upon the social and economic life of our Nation as any that has been enacted into law by this session of Congress.

I would go further and say that it may have a larger impact upon the social and economic life and health of this Nation than any bill I have observed during my service in the Senate.

To all members of the committee, the majority and minority, Republican and Democratic, my congratulations. We worked together. We disagreed. We worried about many provisions of the bill. At last, however, we joined unanimously in recommending and sponsoring this bill, believing that our approach was one that could make progress toward solution of the problem of air pollution.

No, Mr. President, I have prepared some remarks. I do not wish to take much time, because some of my comments emphasize points already made by the Senator from Maine and the Senator from Delaware, but in my

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remarks I attempt to provide the general concept and plan of the bill and its purpose. I hasten now with my statement:

Mr. President, I would like to present an outline of the general plan of the air quality bill, which the committee developed after long and intensive consideration and has now presented to the Senate for approval.

The bill extends for 3 years the au-

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thorizations of the Clean Air Act of 1967, for extension of that authority is necessary this year, and it provides greatly increased amounts to accomplish the work laid out by the bill.

It establishes a new framework for action to achieve clean air, based in large part on recommendations of the administration and the President's Council on Environmental Quality, proposals which have been advanced by Senator MUSKIE, and those developed by the committee as the result of testimony received and through consideration of the air pollution problems facing the country. I do say at this point that many of these proposals were similar, although there were differences in specifics. This general agreement in approach shows, I think, that we have learned much about air pollution and how to go about this task. Alternative ways of proceeding and a rational plan of attack on the problems of air pollution are now better known—as they were not in earlier years.

The bill grants large powers to the Secretary of Health, Education, and Welfare which, it should be noted, will be transferred to the Administrator of the Environmental Protection Agency under the President's reorganization plan to consolidate air, water, and land pollution research, standard setting, and control and enforcement.

The bill in effect establishes a very high national priority for the goal of clean air. It will not succeed without a massive effort, not only by the Federal Government, the States, and localities, but by industry and through the willingness of citizens throughout the country to make the sacrifices necessary and to pay the price of accomplishing the goals of clean air—goals which the committee, the administration, and, I am sure, the Congress believe the public urgently desires.

It is a far-reaching bill, as profound in its impact on the social and economic life of our Nation as any I have seen during my service in the Senate. I know from our discussions, that all members of the committee are keenly aware of the scope of the challenge, of the complexities of the problem, and of the sustained and massive effort which the bill requires —in funding, training of personnel, research, private investment and enforcement. Adoption by the Senate of the National Air Quality Act of 1970, and we trust its enactment into law, will be only the beginning—the step which lays out the statutory plan.

Mr. President, I am glad to see present in the Chamber the Senator from Virginia (Mr. SPONG), the Senator from Missouri (Mr. EAGLETON)—who is now presiding—the Senator from Tennessee (Mr. BAKER), the Senator from Delaware (Mr. BOGGS), and the Senator from Maine (Mr. MUSKIE). That is an indication of their deep interest that follows upon the great work they have done in the committee.

While the bill is far reaching, and sets a high challenge, we believe it necessary for life and for health, and responsive to our duty in husbandry to future generations.

I have emphasized at the outset my appraisal, for I think it important that the Congress and the country recognize the size of the task—that

they know the consequences of a decision to secure clean air under an accelerated schedule. Unless this program is recognized and accepted for what it is—if it is to be underfunded or reduced in priority, or if the national affection for the environment now evident is fickle or inconstant—the bill ought not be enacted, for it would be a shame and tragic to hold out false hope. I make this point also because the scope of action required by the bill rests largely with local decisions—often hard and costly decisions.

This bill is certainly far more than an exercise in the revised authority of Federal agencies. Carrying out the program envisioned by the bill will require actions beyond the jurisdiction and control of the Senate Committee on Public Works, or of any branch of Government alone. We are making our recommendation. We hope we are correctly reflecting the desire of the Congress and of the people of our country.

This is the general plan of the bill:

First, immediately after enactment of the bill—30 days—air quality standards will be issued and then within 90 days established—a national standard applicable to the entire country, and at a level "protective of health." It would be established for each of the five major pollutants for which we now have the most knowledge on effects and about control technology, already published—particulates, sulphur oxides, hydrocarbons, carbon monoxide and photochemical oxidants—and nitrogen oxides next to be published—which account for 98 percent by weight of all air pollution.

These ambient air quality standards would apply, as I have said, to every part of the country, rather than only to the air quality regions established under the 1967 act, when we sought to first concentrate on the most critical areas, some 40 of which have now been designated. For administrative purposes in developing control or implementation plans, the Secretary would complete the designation of the important air quality regions, and the States could divide their remaining area into separate regions if they wish.

Within 9 months after standards are fixed, pollution sources must be inventoried in the entire country, hearings held, and a control plan must be developed—including emission requirements for sources, and whatever land-use, traffic or other controls may be necessary. And these plans must accomplish the air quality standards within 3 years. It is at this point that States and communities must make economic decisions, and decisions on the future growth of their areas and the kind of life they want, in considering alternative means of achieving clean air.

National air quality goals, as distinguished from standards, goals protective of public welfare as well as health and including visibility and effects on the environment, would also be established, but with flexibility to the States in the time for their achievement. Later, the Secretary could add additional agents to those in the ambient air for which national standards would be set and implementation plans required. This is the basic plan, building on the concept of the 1967 act, laid out in sections 108 through 111.

Second, in section 113 the bill establishes the procedure to control emissions from all new factories, including the expansion of facilities, in industries designated by the Secretary. These new source performance standards would require industry to apply the latest available emission control technology and processes wherever a new plant is located—and that high

standard would apply even if the local implementation plan alone could be accomplished with some lesser degree of control. The concept is that wherever we can afford or require new construction, we should expect to pay the cost of using the best available technology to prevent pollution. Like national ambient air quality standards, the best control of new sources, wherever located, is also a recommendation of the President.

This provision requires that new sources, that is, the industry plants, be certified by the Secretary before they can begin operation, to insure they will meet the performance standards —a degree of Federal control beyond any I have supported in the past, which we hope will not be abused, but one we believe necessary as we begin to deal with the air pollution as a national problem.

Further, section 114 requires the Secretary to set emission standards for specific industrial pollutants—applicable to old plants as well as new. This procedure would apply to the same industries designated for new source standards of performance in section 113.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks these industries which it is expected could be designated for control.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. COOPER. Mr. President, the committee considers this approach in section 114 much more manageable than attempting to monitor in the ambient air in every region the less diverse and widespread agents, trace them back to the source, and attempt to enforce against violations of the ambient air quality—as would have been required under the 1967 act.

Taken together, the new source standards of performance, and the national emission standards for selected agents from old as well as new plants, moves a long way toward national emission standards—a concept rejected by the committee in 1967 as logical for moving sources but not for stationary sources. I point out, however, that the earlier concept of national emission controls alone was a simplistic and unsatisfactory approach, which not only raised great problems of fairness and Federal determination of local consequences but also gave no assurance that it would achieve quality of the air we breathe.

The plan proposed in the bill developed by the committee combines air quality standards, local implementation plans, and national emission standards for new sources and for specific agents.

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From old sources, in a way that we believe will accomplish the purpose of the country.

Once the national standards for air quality are established, the next step is for communities to determine how they wish to meet that standard. They will be assisted in drawing up their implementation plans by the knowledge of new plant performance, and of emission control for industrial pollutants, required by the Federal Government. At this point of decision, communities and States must also know what level of emissions they can expect from automobiles—and the consequent degree of traffic control or other steps which must be taken.

I must say that the most difficult part of the bill—and one which earlier had been squarely faced—is the relationship between moving and stationary sources. We have attempted to bring about a relationship between the two in this bill, and any member

of the committee can tell you that it has not been easy. The central problem is that the automobile not only is the source of at least 40 percent of the pollution, but cars move about, and we assume, therefore, must all achieve the same standard. The amount of pollution to be allowed from automobile traffic must really be decided first—and then the remaining decisions can be made, the remaining pieces of the plan can be put into place, to accomplish clean air.

The committee has set a stringent standard and a high goal for the reduction of automobile emissions—by 90 percent of 1970 standards for new cars, by the 1975 model year. I am sure there will be debate on whether that can be accomplished.

These standards also will be set by law, and not be regulated by the Secretary. I am frank to say I do not know if these standards can be met by 1975. I do not know if the national ambient air quality standards required by the implementation plans, including stationary source controls, can be accomplished in all places by 1975. However, as emphasized by the Senator from Maine and the Senator from Delaware, we have set these standards because we believe that they can be met. Second, we know if they are to be met, the maximum effort must be made by the automobile manufacturers, and by the owners of other emission sources. We know that if delay is permitted the number of cars in use will increase, new plants will be built, existing pollution will continue, and the possibility of clean air will be set back, perhaps 5 years or longer.

There will be debate on amendments, and perhaps we will be able to review provisions in the bill, not only for automobile manufacturers, but also for the owners of other facilities with source emissions. For example, in the committee I offered, for myself and the Senator from Tennessee (Mr. BAKER), a section which provides for review by the Secretary with appeal to the courts, permitting a special extension of 1 year if certain strict requirements cannot be met. The section was adopted by the committee, and is section 202(b)(4).

I must say it is a very strict and tightly drawn provision, but it does assure the right that should be accorded everyone, the right to due process under the law.

Mr. President, in presenting this general outline of the plan of attack on air pollution provided by the bill, it might as well be said that the philosophy of the bill abandons the old assumption of requiring the use of only whatever technology is already proven and at hand and of permitting pollution to continue when it is not economically feasible to control it. The bill proceeds instead to set out what is to be achieved, and places its reliance on a great effort to develop technology, to train and put to work the manpower to accomplish that purpose, and it assumes a readiness by industry and the people or the country to pay the costs of pollution control.

There are a great many other important provisions of the bill, especially those dealing with much more stringent and timely enforcement. But I think that is the conceptual framework, and I thought it would be useful for me to give my appraisal at this time, as the Senate begins its debate and consideration of the National Air Quality Standards Act of 1970.

EXHIBIT 1

New stationary sources which the administration has advised the committee to expect would be subject to the provisions of this section include:

Cement manufacturing;

Coal cleaning operations;

Coke byproduct manufacturing;

Cotton ginning;
Ferroalloy plants;
Grain milling and handling operations;
Gray iron foundries;
Iron and steel operations;
Nitric acid manufacturing;
Nonferrous metallurgical operations (e.g. aluminum reduction, copper lead, and zinc smelting);
Petroleum refining;
Phosphate manufacturing;
Phosphoric acid manufacturing;
Pulp and paper mill operations;
Rendering plants (animal matter);
Sulfuric acid manufacturing;
Soap and detergent manufacturing;
Municipal incinerators; and
Steam electric powerplants.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, I yield briefly to the Senator from Delaware.

PRIVILEGE OF THE FLOOR

Mr. BOGGS. Mr. President, I ask unanimous consent that additional staff members of the Committee on Public Works be permitted on the floor during consideration today and tomorrow of amendments to the Clean Air Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL AIR QUALITY STANDARDS ACT OF 1970

The Senate continued with the consideration of the bill (S. 4358) to amend the Clean Air Act, and for other purposes.

Mr. SPONG. Mr. President, the proposed National Air Quality Standards Act of 1970 is without question the most significant and far-reaching environmental protection bill ever to be considered on the floor of the Senate. For the first time, specific air pollution compliance schedules would be established by legislation—a provision reflecting the committee's concern over the direct adverse effect of air pollution upon public health.

We have carefully preserved the right of the public to participate in the pollution abatement process. In one significant respect, we have broadened that right. We have written into the bill a section authorizing citizens to bring suits on their own behalf to assure enforcement of standards, emission requirements or implementation plans.

In an effort to prevent frivolous or harassing litigation, we have provided that before instituting suit a citizen must give notice to Federal and State authorities, and allow at least 30 days to permit them to initiate enforcement proceedings against the alleged violator. There would be no provision for delay following notice if there is alleged violation of the certification requirements under section 115, or a court order. The court could allow costs of litigation to either party whenever it determines that such an award was in the public interest.

It is not our intent to substitute citizen suits for the enforcement efforts of the responsible administrative agencies. Rather, we intend the provision to complement and encourage the abatement activities of governmental agencies.

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I am particularly pleased, Mr. President, over those sections of the bill dealing with pollution from Federal facilities and installations. Existing law contains only an expression of intent that Federal departments and agencies should, "to the extent practicable," cooperate with Federal and State efforts for the prevention of air pollution.

As is pointed out in the committee report, Federal agencies have been notoriously laggard in abating pollution. The pending bill would require

Federal agencies to provide leadership for the control of air pollution. Only the President could exempt a Federal facility from the act, and then only if he determined the exemption to be in the paramount interest of the United States. An exemption could not be granted because of a lack of an appropriation unless the President requested an appropriation and the Congress failed to approve such appropriation. The President would be required to report to Congress annually the specific exceptions granted, together with an explanation of the exceptions.

We cannot expect individuals and businesses to be motivated to abate pollution if their Government continues to pollute. I support wholeheartedly the mandate for the Federal Establishment to live up to the national commitment for clean air.

The committee has changed the thrust of existing law as it relates to emissions from motor vehicles. In the Air Quality Act of 1967, we required the Secretary to set such standards on the basis of economic and technological feasibility. Under the pending bill, the Secretary would set standards on the basis of the degree of control necessary to insure health-related ambient air quality levels.

In view of evidence that emissions of carbon monoxide, hydrocarbons, and nitrogen oxides now exceed safe health levels in many major metropolitan areas, the committee's decision is amply justified. The overriding purpose in the enactment of legislation of this type should be the protection of public health. The automobile is the major moving source of pollution. Its emissions are responsible for an estimated 60 percent of the Nation's urban air pollution problem. Moreover, the rate of growth in motor vehicles is twice that of our national population increase. Our population growth is about 6,000 per day, but motor vehicles are increasing at the rate of 12,000 per day.

The bill would establish as 1975 standards the emission goals proposed for 1980. Automobile manufacturers have made it abundantly clear that there are serious leadtime problems involved, and that technology may not be available to meet the 1975 standards. The committee weighed very carefully that position against the opinion that health requirements warrant an escalation in the 1980 goals.

In my view, the industry should be required to exert every effort to meet the standards set forth in the bill. Recognizing that technology may not be available to meet the standard, and that the industry's leadtime requirements may pose problems, I concluded that there should be a carefully drawn mechanism in the bill which would permit an extension of the standard.

Such a provision has been included. It would permit the Secretary of Health, Education, and Welfare, after a hearing, to grant an extension of 1 year. That decision would be subject to judicial review. During the committee's consideration of this problem it was suggested that Congress, rather than the courts, should review the Secretary's decision.

I concluded that jurisdiction should be vested in the courts because they are better equipped to obtain the information necessary on which to make a judgment. In this particular situation, most of the information would be in the hands of the automobile manufacturers. The courts can obtain that information through the discovery process, and can compel the attendance of witnesses. In any event, Congress would set the standard by this legislation, and of course Congress could amend it at any time.

Mr. President, it has been a privilege to participate in the development

of this landmark bill. The Subcommittee on Air and Water Pollution devoted most of the summer to the measure, and I hope it will be enacted. I wish to thank our distinguished subcommittee chairman, the Senator from Maine (Mr. MUSKIE), for his leadership during our deliberations. Without question, he is the most knowledgeable Member of the Senate on the subject of this bill. I also am indebted to the distinguished chairman of the full committee, the Senator from West Virginia (Mr. RANDOLPH), for accommodating the members while they worked their will on the legislation.

I also wish to acknowledge the efforts and contributions of the Senator from Missouri (Mr. EAGLETON), and the minority members of the committee—particularly the Senator from Kentucky (Mr. COOPER), the Senator from Delaware (Mr. BOGGS), and the Senator from Tennessee (Mr. BAKER).

Mr. MUSKIE. Mr. President, I wish to express my appreciation for the statements made this afternoon by the distinguished Senators from Delaware, Kentucky, and Virginia. Each of them has made a significant contribution to the work on this bill, the ideas contained in it, the shape it now takes. I expressed my appreciation generally to the members of the committee earlier. I would like to reinforce it in response to the excellent statements made today.

I yield to the distinguished Senator from Tennessee (Mr. BAKER), whose work also has been indispensable.

Mr. BAKER. Mr. President, I thank our colleague from Maine. I thank him for the opportunity to speak briefly in the nature of an opening statement on an important piece of legislation. It is important that the Senate understand the potential implications of this bill.

Although as a rule I try to avoid hyperbole, I do not think it is exaggeration to say I think this bill will have a profound impact on the economic and governmental characteristics of the American Nation.

One of the most self-evident truths about the environment is the fact that the environment is a system, from which no part can be truly and finally separated. Thus, every act which impinges on one part of the environment or the "ecosystem" has an impact on other parts of the system. The death of an insect has an impact on the food chain; the detonation of a nuclear device in the atmosphere has a potential impact on the genetic characteristics of unborn children.

It is not necessary that mankind be paralyzed into inaction by the realization that his actions spread like ripples on the surface of a pond. It is also not necessary that man return to the cave to protect his environment. But it is necessary that we seek new knowledge of how our actions do affect our environment, that we rationally choose ways to minimize or eliminate effects that we do not want to occur, and that we implement these methods with a sense of urgency where the effects are immediate.

Mr. President, the concept established in this bill that the objective of healthful air be attained within a required period of time is not entirely new and one that is entirely appropriate in pollution control. In the bill it is proposed that the quality of air necessary to protect the health of persons in the United States in every area of the United States must be obtained within 3 years from this date of promulgation or approval of an implementation plan. It is proposed that this is what the Congress would determine to be the maximum time to attain this quality of air and what the American people have a right to expect.

It is important to note that in con-

sidering this bill we are considering a basic change in the philosophy of the Government of the United States toward the pollution of the air envelope upon which we all depend. When I first came to the Senate of the United States, the first legislation in this field had already been passed, largely under the guidance and directions of the subcommittee chairman, the Senator from Maine (Mr. MUSKIE).

At that time, in early 1967, the junior Senator from Tennessee was exposed to the intricacies and underlying rationale of the so-called ambient air theory; that is, that the emphasis was going to be directed toward accomplishing the improvement of the particular quality of the overall atmosphere.

I recall at that time that we also considered as an alternative to the ambient air approach the establishment of uniform national standards for all sources of emissions by class.

I remember at that time there was considerable dialog among members of the committee and witnesses on the relative methods, the so-called dilution theory and the pristine air theory.

The ambient air concept implies that it is possible or desirable to accept a certain amount of pollution; that it is not desirable to set uniform standards for every source. It is implicit in the stack standard or emission standard theory that we will not permit a degree of pollution in the atmosphere of those areas that have relatively clean air, which is probably the more idealistic and probably less attainable objective.

At that time, in 1967, the policy of ambient air quality was adopted and became the law of the land. It has proceeded apace now for more than 5 years.

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The uniqueness of this legislation is that it proceeds to depart from the ambient air theory with the requirement that, at least insofar as the automobile is concerned, we are going to establish by statute certain precise emission levels that cannot be exceeded by any automobile anywhere, which brings us back to the original concept of the alternative of the emission standard theory.

It is an important step, and I think I would be less than candid with my colleagues if I did not make the estimate that, if the legislation is passed —and I hope it is—it probably is the forerunner of other efforts to establish particular standards for particular sources of pollution into the atmosphere. It most certainly is not likely to be the last.

So if we establish these standards for automobiles now, which is potentially one of the most controversial sections of the bill, I think we should keep one eye cocked on the fact that we are likely to pursue this theory further rather than stop here.

I believe, on balance, that in the 4 years I have been in the Senate I have seen few, if any, other pieces of major legislation that have been as thoroughly examined and as painfully considered as the bill before us has.

I have seen the committee work together, and I have seen it work against itself, so to speak, in trying to arrive at a fair plan, under the necessities and requirements of the circumstances, for a workable solution of the problem. I have seen us evolve this new theory and yet imbed it into the original concept of the quality of ambient air. I see in the bill a melding together of the two concepts and the beginning of some new differences.

I do not suggest, as I never suggested in committee, nor do I believe any other member of the committee

suggested, that the bill is perfect, or even that it is outstanding. It may turn out to be very good. It may turn out to be best of all, though, for beginning something new.

There are certain provisions in it that give me great pause. One is the very nature of the requirement that certain statutory standards be met by the automobile industry by a specific statutory date, with the provision for only a limited escape hatch.

As the distinguished Senator from Kentucky (Mr. COOPER) pointed out, there was considerable discussion of the various ways of relieving the stresses of uncertainty; and the bill as reported reflects a limited possibility of relief based on judicial review within narrow limits.

I am not certain this is the best way or only way to do it—there are other ways—but it seems to me it is the best compromise under the circumstances. If we are to consider the possibility that the automobile industry cannot in fact build production line vehicles for sale to the general public that meet these standards by the year 1975, and if we are to give credence to the allegation that they do not now have the technology in sight, then I think it is incumbent on us to provide a method of escape from the statutory provision. We have attempted to do that by judicial review.

It seems to me that judicial review—calm, judicious determination, that certain fact situations do or do not exist which would form the basis for relieving the automobile industry from compliance with these sections of the statute—is the best way to isolate that determination from the considerable political pressures which would be brought to bear if we had not then solved the problem of automobile pollution.

Other ways are suggested, one of which is similar to the procedure followed under the Reorganization Act suggested by the distinguished junior Senator from Kansas, or other methods of judicial review. The important thing to me, though, is that the bill as reported does provide an escape hatch. It does provide a method of coming to terms with the possibility that we will not be able to meet the standards set.

I frankly think we can. I frankly think the automobile industry can meet these standards. And the overriding consideration is that we must do something to clean up atmospheric pollution, and recognize the fact that the automobile is a major contributor to it.

Mr. President, another section that concerns me has to do with the regulation of vehicle fuels. The language as finally reported by the committee appears in section 8 beginning at page 74, line 12. A new section, 212, is added to the Clean Air Act.

There has been a flurry of attention recently in connection with the introduction of low-lead automobile fuels into the market. At least one major metropolitan government has announced that its fleet vehicles will use only gasoline with no lead additives.

Although it has been lead that has received the greatest attention, there are other additives used in fuels or which might be used in fuels which are potentially hazardous or undesirable. The subcommittee received testimony from witnesses to the effect that the combustion of certain aromatics present in high-octane unleaded fuels might be more hazardous to health than the presence of lead itself in emissions from vehicles burning leaded gasolines. The subcommittee also heard testimony from at least one scientific witness to the effect that more lead is introduced into the human system through the food chain than through the inhalation of lead

particles present in the atmosphere.

There appears to be no unanimity among competent persons about the contribution of fuel additives to the general pollution problem. But there is no doubt that the combustion of fuels in vehicles is a significant source of air pollution.

It has seemed to me from the outset—and I have sought to have this concept embodied in the committee language—that in considering the question of fuel composition one must never lose sight of the fact that what is of interest is not the composition of the fuel per se but the emission of the products of the combustion of a given fuel into the atmosphere. This may seem like a simplistic or truistic point, but it is a central one. Put more colloquially it says, "We are concerned not with what goes into the tank but with what comes out of the tailpipe."

The committee bill provides that any manufacturer of a vehicle fuel must register that fuel with the Secretary and disclose to the Secretary, among other information, the composition of the fuel and the products of the combustion of the fuel. The Secretary is authorized to either control or prohibit the sale of any given fuel when he finds one of two things:

First. That the combustion or evaporation of such fuel produces emissions that, in and of themselves, endanger the public health or welfare; or

Second. That such emissions prevent the operation of a system that is necessary to reduce automobile emissions to the levels required by standards issued by the Secretary under section 202 of the act.

The important thing to bear in mind is that this section is not designed to give to the Secretary of Health, Education, and Welfare the authority to set about regulating the composition of fuels. The composition of fuels in the business of fuel manufacturers and those who buy their products. The business of the Secretary of Health, Education, and Welfare is seeing to it that the public health and welfare of people is protected from the harmful effects of air pollution. It is, for example, entirely possible that an economic manner can be found to meet the section 202 standards that would permit the continued use of lead additives in gasoline. In such an event, the Secretary would ban fuels containing lead only if he found that the fuel emission into the atmosphere of the combustion products of a given fuel containing lead additives was, in and of itself, an endangerment of the public health or welfare. An amendment offered in committee by Senator SPONG and now appearing as new subsection 212(c)(3) at page 77, line 3, further provides that the Secretary shall prohibit the use of any fuel until he finds that such prohibition will not result in the use of another fuel which will provide emissions dangerous to the public health or welfare in the same or greater degree.

I simply reemphasize for the record that what is intended is the regulation of fuels and not fuel additives or fuel composition. And the fuel is proposed to be regulated, not because of what is in it or how it is made up according to what formula or process, but because of emissions into the atmosphere following the combustion of the fuel.

I think it is urgently important, Mr. President, that we keep in mind that we are trying to regulate the combustion byproducts of the fuel, and not shift the burden of innovation from the manufacturer of the fuel to the Secretary.

Mr. President, I referred earlier to section 202 as it relates to automobile emissions. This section of the bill has

gained the greatest public attention. It relates, of course, to emission standards for moving sources, and most particularly subsection 202(b), beginning at page 46, line 21, which sets very tough new emission

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standards for passenger automobiles which must be met no later than January 1, 1975. It is well known to the Senate and to the people generally that the four principal manufacturers of automobiles in the United States have stated that they know of no way in which the standards can be met.

It may prove to be true that the standards cannot be met. The industry does not know. The Secretary of Health, Education, and Welfare does not know. Certain it is that the junior Senator from Tennessee does not know. But I do know that we need to try, and to try hard. It is believed by the committee that section 202(b) provides an incentive for such an all-out effort. It is, I think, the conviction of the committee, generally, that without such an incentive such an all-out effort might not be made. This is not meant to impute to the automobile industry any lack of devotion to the public welfare. It is meant only to acknowledge a certain conviction on the part of members of the committee, and particularly of the subcommittee, nurtured from years of contact with the problem and efforts that have been made to deal with it, that an ambitious goal encourages and promotes a more satisfying result.

As I stated earlier, Mr. President, such a requirement, I think, might better not be built into the statute if it were not for the fact that we also provide a realistic appraisal and review of whether or not the industry is not able to meet the requirements of the statute. Of course, it is clear that what Congress does today, Congress can undo later, but I think that is a fairly faulty way to approach a subject as important as this.

I think the bill does provide relief in the form of judicial review under section 202, and that there is a fair opportunity for the industry to show that, with good-faith effort, it was not able to meet those standards, if that turns out to be the case.

But I underscore my comments on that particular subject by saying that I personally have great faith that the automobile industry, with the internal combustion engine, if it chooses, can meet these requirements, and that in any event we must meet them, if we are to protect the health and welfare of this and future generations.

Mr. President, I yield the floor.

(Mr. SPONG assumed the chair as Presiding Officer at this point.)

Mr. EAGLETON. Mr. President, much has been said today, and will be said, with respect to the origin and background of the pending legislation with respect to air pollution and the establishment of national air quality standards. All I wish to do, Mr. President, is add a few brief words echoing the sentiments as previously expressed, I think, by the Senator from Kentucky (Mr. COOPER), the Senator from Delaware (Mr. BOGGS), the Senator from Tennessee (Mr. BAKER), the Senator from Virginia (Mr. SPONG), and others in paying tribute both to the chairman of the subcommittee (Mr. MUSKIE) and to his very able and hard-working staff, which assisted all of us in the preparation of this measure.

No single piece of legislation, Mr. President, has demanded more of my personal attention in the past 6 months than the matter now before the Senate. As the Senator from Tennessee (Mr. BAKER) has pointed out, this may not go down in history as the most outstanding piece of legis-

lation ever enacted, but I think, to use the Senator's words, in his judgment it will be considered to be a very good piece of legislation. And insofar as that which can be devised by mortal man—to wit, nonperfection—is concerned. I guess the accolade of "good" is about as safe a one and as appropriate a one as we can apply to the legislative process.

Thus it was with great pleasure that I joined as a cosponsor of this measure, and I repeat that in significant measure, the credit for this bill emerging in its present form to the floor of the Senate belongs to the Senator from Maine and, in no small measure, to his very able and persevering staff, who spent many, many hours during the nitty-gritty and unheroic work of assisting us in getting it into final legislative form.

I think that at the very outset, as Senator BAKER pointed out, it will be considered a very good, very meaningful, and very worthwhile piece of legislation.

Mr. MUSKIE. Mr. President, I should like to say a word about members of the committee I regard as counsel to the committee.

Senator BAKER, Senator EAGLETON, and of course the distinguished Senator from Kentucky (Mr. COOPER) have been of great value to me, as well as to the rest of the committee, I think, in picking up the legal challenges that are obviously involved in the bill. I think that by their disagreements with each other as much as by their agreements, they were able to focus our attention on important points that might otherwise have been neglected. I should like to express my appreciation. Senator BAKER this afternoon has particularly given us an example of the kind of thoughtfulness that he has addressed to this bill in that respect.

Mr. President, I yield to the Senator from Kansas. I should like to express my appreciation to him, as a member of the committee, for the work he has given to this bill. Especially I am interested in paying tribute to an amendment he will call up later in the course of this debate which I think is an ingenious answer to the troublesome problem of reviewing a policy which the bill incorporates.

Mr. DOLE. I thank the Senator. Mr. President, President Nixon, in the first Presidential message to Congress on the environment, proposed far-reaching legislative and administrative initiatives to restore and preserve our precious natural resources. The President pointed out that we have "too casually and too long abused our national environment." He emphasized that "the time has come when we can wait no longer to repair the damages already done, and to establish new criteria to guide us in the future."

In his recent message "A Call for Cooperation" President Nixon declared that "reform" would be the watchword of his administration—reform of our institutions and creation of the conditions we will live with in the future. The President described our choice very clearly:

> We can choose to debase the physical environment in which we live and with it the human society that depends on that environment, or we can choose to come to terms with nature, to make amends for the past, and build the basis for a balanced and responsible future.

A major portion of the 37-point program proposed by the President was devoted to air pollution. We have become increasingly aware that the air around us is our most valuable resource and one which we must act now to preserve. Carbon monoxide, one of the major pollutants, is reaching unhealthy levels regularly in major metropolitan areas. Other contaminants entering our air cause millions of dollars in property damage and destroy plant and animal life.

The bill reported from committee is in response to this challenge and is the result of many hours of bipartisan efforts by committee members, staff members, and the executive branch. It contains elements of legislation introduced by Senator MUSKIE, chairman of the subcommittee on Air and Water Pollution, as well as significant aspects of legislation introduced by Senator SCOTT, minority leader, on behalf of the administration.

Specifically, the following Presidential administrative and legislative recommendations for control of air pollution are contained in the bill:

1. More stringent motor vehicle emission standards.
2. More effective procedures for insuring that motor vehicles meet the low pollution standards.
3. Authority to regulate fuels and fuel additives.
4. Financial support for research and development of unconventional pollution-free power sources.
5. National ambient air quality standards, with the States required to prepare implementation plans for meeting these standards.
6. Accelerated designation of interstate air quality control regions.
7. Establishment of national emission standards for pollutants which are extremely hazardous to health and for new facilities which could be major contributors to air pollution.
8. Extension of Federal authority to seek court actions against both interstate and intrastate air pollution.
9. Court authority to impose increased fines for violation of emission requirements.

My State of Kansas is fortunate that it does not face so many of the severe problems of air pollution confronting more intensively industrialized States. Passage of this bill will assist in remedying the problems which do exist and insure the preservation of the high-quality of air Kansas presently enjoys. Specific pollutants present in the Kansas City air quality control region will be subject to action by both Kansas and Missouri within 3 years.

Under this bill, we can continue to encourage the location of new industry in Kansas and other rural unspoiled regions without fear of polluting the high quality of air found there. At the same time, national standards for new stationary sources will not place some States at a comparative disadvantage affecting industry decisions on plant locations.

Kansas State officials responsible for

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administering air pollution laws have expressed a hope that with the increased responsibilities mandated by this bill will come an increase in the Federal funding necessary to hire additional technical personnel. I want to specifically urge the Congress to appropriate sufficient funds to meet this need, and urge officials responsibile on the Federal level to work closely with the States in fulfilling their new responsibilities.

While I am in substantial agreement with the bill as reported, I feel there are certain provisions which could be improved. We have established the 1975 model year as the deadline for achieving a 90-percent reduction in automobile emissions from specified 1970 levels. The committee, recognizing that there might not be sufficient time for the industry to meet this standard, provided for a 1-year extension of the deadline by the Secretary, subject to judicial review. However, I believe a combination of administrative and congressional action would be more consistent with the intent of Congress. I have submitted an amendment in the form of a substitute for Section 202(b)(4) to provide automobile manufacturers an opportunity to petition the Secretary for a 1-year extension of the 1975 deadline. If the Secretary who possesses the expertise and factfinding authority, finds the extension to be in the public in-

terest, and also finds that all possible good faith efforts to meet the standard have been made, and the technology is not available, he must recommend to Congress a 1-year extension, with a complete record of information available to it, will then be in position to determine if the Secretary's policy judgment in establishing the 1975 deadline, and it is only logical that Congress should have the authority to review that policy decision on the basis of social, health, and economic considerations, which might become apparent as that deadline approaches.

By the terms of the amendment, Congress would be given the final opportunity to act, thus placing the responsibility where it should be. The procedure is similar to that employed in the executive reorganization acts and would be more expeditious than depending on court action with the potential for delay incumbent in that process.

Adoption of this amendment will provide a responsible answer to a difficult problem, one that I know concerns every member of the committee greatly. If Congress, in a declaration of national policy, establishes stringent emission requirements for the automobile industry, it should assure congressional review of that policy judgment in the event that compliance with those standards is not possible.

I urge my colleagues to support this bill and my proposed amendment.

AMENDMENT NO. 928

I submit the amendment and ask unanimous consent that it may be printed in the RECORD.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 48, beginning with line 11, strike out all through line 6 on page 52, and insert in lieu thereof the following:

"(4)(A) Within 24 months but no later than 12 months before the effective date of standards established pursuant to this subsection any manufacturer or manufacturers may file with the Secretary an application for a public hearing on the question of a suspension of the effective date of such standards for one year. Upon receipt of such application, the Secretary shall promptly hold a hearing to enable such manufacturer or manufacturers and any other interested person to present information relevant to implementation of the standards.

"(B) In connection with any hearing under this subsection, the Secretary may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, hte district court of the United States for any district in which such is found or resides or transacts business, upon notice to such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and and failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) Within 6 months after such receipt of the application for suspension, the Secretary shall, if he finds upon a prepondence of evidence adduced at such hearing that a suspension is essential to the public interest and the general warfare of the United States, that all possible and good faith efforts have been made to meet the standards established by this subsection, and that effective control technology, processes, operating methods or other alternatives are not available or have not been available for sufficient period to achieve compliance prior to the effective date of such standards even with the full application of section 309 of this Act, recommend to Congress that (i) the effective date of such standard be suspended for a period of only one year, and (ii) the emission standard that should be applied during any such suspension which standard shall reflect the greatest degree of emission control possible through the use of technology available.

"(D) The findings and recommendations required by this subsection shall not be subject to judicial review. Such recommendations shall be effective as law at the end of the first period

of 60 calendar days of continuous session of Congress after the date on which the recommendation is transmitted to it unless, between the date of transmittal and the end of the 60-day period, either House passes a resolution stating in substance that the House does not favor such recommendation.

"(E) For the purpose of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

"(F) Nothing in this paragraph shall extend the effective date of any emission standard established pursuant to this subsection for more than one year.

Mr. COOPER. Mr. President, I know there is wide interest in the emission standards for automobiles required by the bill developed by the committee. During consideration in subcommittee and the full committee, we referred to a summary table of automobile emissions, which contains the figures in grams per mile comparing uncontrolled emissions, the 1970 standard, the proposed 1975 standard under present law, the 1980 goal put forward by the administration, and the level proposed in the bill. I ask unanimous consent that the table be printed in the RECORD for the information of Members, because I am sure that these facts will be referred to during the debate.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

AUTO EMISSIONS

[All figures in grams per mile]

	Hydrocarbons, new test	Carbon monoxide, new test	Nitric oxides, old test	Particulate, matter old test
Uncontrolled	14.6	116.3	4.0	0.4
1970 standard	2.9	37.0		
Proposed 1975 standard	.5	11.0	.9	.1
Proposed 1980 standard	.25	4.7	.4	.03
Bill language (90 percent reduction of 1970 or uncontrolled)	.29	3.7	.4	.04

Mr. HRUSKA. Mr. President, at the outset of my remarks, I want to testify and bear witness to the great interest this Senator has had in measures dealing with pollution and with antipollution measures. This Senator has cosponsored the administration bill, which was introduced by the distinguished Senator from Pennsylvania (Mr. SCOTT).

I have subscribed to the very comprehensive program which the President has announced and which he is urging with such commendable loyalty and aggressiveness. After all, this is one of the leading issues, if not the leading issue, of the day. The need is urgent; it is vital. It is vital and urgent not only for proper living and for health and for safety to the millions of people in America, but also in terms of survival on a longer pull.

This bill and the subject with which it deals is monumental, and I commend the committee for it. It is a pioneering effort, and I subscribe to the words of the Senator from Tennessee that many of its provisions are the result of painstaking effort as well.

Our task in this field is a great one, as we all know. It is not only to overcome the backlog of 100 years of neglect in this field. During that time this Nation has become an industrial Nation. We have profligate with our resources. We have not been sufficiently concerned with the abuses we have committed upon our air, our soil, and our water.

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Again I say that I commend the committee for the effort it has made in this bill, which contains almost 100 printed pages.

However, one thing distresses this Senator very much. Notwithstanding the importance of this bill and its monumental character, it was not until Friday, when Thursday's RECORD became available, that the text of this bill became available even to Members of the Senate.

It was not until this morning that copies of the report on this bill were available so that we could get a feeling for the rationale and the fashion in which it is to be implemented and its provisions enforced.

It has been only since last Friday that the Office of Budget and Management got the bill so that it could study it and give its opinion to the Members of Congress.

Just this morning, the Department of Justice got it for the purpose of giving its legal opinion to the Office of Budget and Management. That does not comport with the general idea of legislating carefully and properly in a field which is so important.

There is a provision in the bill analogous to S. 3201, which is known as the consumers class action bill. This is a highly technical and vital field since it directly affects the functioning of our court system.

Our courts are hard pressed these days, it took us 5 years to get to the authorized strength of 401 judges in our judicial system. It will take perhaps another year to get the full benefit of the program because of delays in getting the appointments, getting the judges qualified, and getting them ready to begin their duties.

From time to time we have had discussions about the situation that exists in the court system. One of the most dramatic presentations was made by Chief Justice Burger during the sessions of the American Bar Association in St. Louis, Mo., in August of this year—about 6 weeks ago—when he called attention to the plight of the judicial system and the heavy load and backlog, and the many antiquated procedures and practices which still prevail in the judicial system. Then he went on to say this:

> Meanwhile, not a week passes without speeches in Congress and elsewhere, and editorials, demanding new laws, new laws to control pollution, new laws to change the evironment, new laws to allow class actions by consumers to protect the public; but the difficulty lies in our tendency to meet new and legitimate demands for new laws but without adequate considerations for the consequences on the courts.

That defect is reflected in this bill.

Again, let me say—and I propose to repeat this proposition another time, or perhaps two or three times—that I am entirely in sympathy with the objectives of the bill. I realize the important and the vital part it will play in the health, welfare, safety, and survival of the citizens of the Nation, born and unborn. I appreciate all those things. But we should also fix in our minds, when we expect to place a bigger burden on the judiciary system, that we have to accommodate that added burden in one of two ways.

One is to enlarge the court system, enlarge its capacity to handle an added load, or, alternatively, to adjust the priorities of our judicial system.

Shall we burden the court system with the large number of lawsuits I anticipate will result from section 304 at the expense of trying criminal cases?

Shall we do it at the expense of added delay in trying very important cases in antitrust and civil cases of all kinds. They cannot, of course, all be tried at once.

As we proceed with this important legislation, we must take into consideration the burden that will be

placed on the court system by section 304.

Let me invite attention to the fact that in S. 3201, the so-called consumers class action bill, there is an elaborate and far-reaching provision for bringing class actions. Many of the restraints which are normally put upon Federal court jurisdiction are removed. Serious questions are therefore raised as to whether real relief or redress for the individual results, or the cause of combating unfair trade practices is advanced.

There is very important testimony in the record before the Judiciary Committee that says there will actually be a penalty, what we call a whiplash to the consumers. Instead of advancing the cause of combating unfair trade practices and affording relief and redress to the individuals involved, the opposite will be true.

The consumers class action bill was referred to the Judiciary Committee, not for the purpose of obstruction, not for the purpose of defeating or postponing action on the bill, but for the purpose of insuring that the bill will truly serve the purposes intended.

Hearings were extended, but we heard the last witnesses today. We hope to have reported by the Judiciary Committee very soon the results of our inquiry into the subject. We hope to improve the bill so that the provisions of the Consumers Unfair Trade Practices Act can be carried out in an effective way without menacing the functioning of the court system. We want to give the court system a chance to work with some respect for national setting of priorities, considering the tremendous backlog of cases in the courts.

Mr. President, during the hearings, we heard testimony from Judge Rifkind. His testimony included statistics on court congestion. I have excerpted that material from his testimony and ask unanimous consent that it be printed in the RECORD. It gives a very good idea of the problem which we already have, without even considering the load proposed as an additional burden upon the courts by section 304 of this bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

APPENDIX

STATISTICS ON COURT CONGESTION

From the Fiscal Year 1969 Annual Report of the Director of the Administrative Office of the United States Courts, the following information has been obtained:

COURT OF APPEALS

In fiscal year 1969, there were 10,248 appeals commenced—a record number, amounting to a 12.4% increase over the previous year. At the end of fiscal 1969, there were 7,849 cases pending in the Court of Appeals, an all time high. In 1967 there were 90 appeals docketed per judgeship on a national average, and in 1969, the figure was 106 per judgeship. The heaviest increase in appeals, according to type of case, was in habeas corpus by Federal prisoners (up 55% over previous year); appeals from denial of motions to vacate sentence under 28 U.S.C. §2255 (up 29%); and Civil Rights appeals (up 46%).

DISTRICT COURTS

In an attachment to the Annual Report it is stated that: "The United States District Courts during 1969 experienced the largest increase in case filings (exclusive of bankruptcy) in recent years." (p. 115). During 1969, there were 110,778 civil and criminal cases filed in the district courts, an increase of 8.4% over the previous year, and at the end of the year there were 104,091 cases pending. This is the highest pending case figure in the district courts on record. This increase case load caused the median time to reach trial in civil cases to increase from 12 months in 1968 to 13 months in 1969.

On the civil side, a great portion of the increase was attributable to civil actions brought under special statutes. These types of cases increased by 17.3% during the year. For example, over the one-year period suits under Narcotic Rehabilitation Act (Pub. Law 89-793, Nov. 8, 1966) increased by 419.6%; Civil Rights suits by 51.5%; Federal prisoner petitions, by 26.7%; state prisoner pe-

tions 12.2%. Security suits, by 15.5%; and Social Security cases by 32.3%. At the end of 1969, there were 83,957 civil actions pending, and of these 9.8% have been pending for more than 3 years. And, according to the report, "Since 1963, 3-year-old pending civil actions have increased steadily." (p. 124).

There were 33,585 criminal cases filed in the district courts during 1969, an increase of 9.3% over 1968. This increase was largely attributable to increase in certain types of cases: Selective Service cases, up 81%; Immigration cases, up 57%; and Narcotics cases, up 21%. In the attachment to the Director's Annual Report, it was stated:

"Thus overall, both the Courts of Appeals and the district courts experienced an across-the-board increase in judicial business in 1969 of approximately 10%. In spite of an increased output of terminated cases, the arrearages on the dockets of the courts of appeals increased 19% and the arrearages on the dockets of the district courts increased 7%." (p. 103) . . .

"The weighted caseload per judgeship in the United States district courts increased to 289 in 1969 compared with 265 in 1968 and 252 in 1967. The increase this year reflects primarily the 10 percent increase in the filing of civil and criminal cases. But it also reflects the changing character of the litigation. The increase in the filing of the more time-consuming cases was greater than average in 1969. In the last 2 years the weighted caseload per judgeship has increased almost 15 percent from 252 to 289. Approximately 47 additional district judgeships would be required to reduce the 1969 weighted caseload per judgeship to what it was in 1967." (p. 132)

FIRST 9 MONTHS OF FISCAL YEAR 1970

The latest figures available from the Director, Administrative Office of the United States Courts, cover the first nine months of FY 1970 (period ending March 31, 1970), and reveal that the burden of the federal courts has steadily increased.

Appeals docketed during the third quarter, FY 1970 reached 2,990, an increase of 18.5% over the same period of the previous year.

Projecting these statistics to the end of fiscal year, the Directors' Report concludes that there will be 10,806 appeals docketed during FY 1970 and that on June 30, 1970, there will be 9,136 appeals pending, an increase of 16.4% over the previous year.

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DISTRICT COURTS

In the third quarter of FY 1970, 21,280 civil cases were filed in the district courts, an increase of 12.3% of the same period of the previous year. On March 31, 1970, there were 91,308 civil cases pending in the district courts, an increase of 7.5% over the previous year. On March 31, 1970, for each of the 340 judgeships, there were 269 civil cases pending in the United States district courts.

On the criminal side of the docket, the increase in the court backlog was more acute. In the first nine months of fiscal 1970, there were 29,469 criminal cases filed, an increase of 15.1% over the previous year. On March 31, 1970, there were 21,449 criminal cases pending, an increase of 22.3% over the previous year.

In Bankruptcy cases, the trend towards decreased filings has reversed itself. In the first nine months of FY 1970, there was an increase of 3.1% in the cases filed, the cases terminated during that period decreased by 6.8%, resulting in an all time record of 187,537 cases pending on March 31, 1970.

Mr. HRUSKA. Mr. President, section 304(a)(1) provides that a lawsuit "may be brought by one or more persons on their own behalf. (A) Against any person, including, but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such schedule, timetable, emission standard, or prohibition, or (B) against the Secretary where there is alleged a failure of the Secretary to exercise (i) his authority to enforce standards or orders estabished under this act; and (ii) any duty established by this act."

Mr. President, I ask unanimous consent that for continuity of the discussion in which I am engaged the complete text of section 304 be printed at this point in the RECORD.

There being no objection, the section 304 was ordered to be printed in the RECORD, as follows:

CITIZEN SUITS

"SEC. 304. (a) (1) In furtherance of the purpose of this Act to protect the public health and welfare and control air pollution, the district courts of the United States shall have original jurisdiction, regardless of the amount in controversy or the citizenship of the parties, to enforce, or to require the enforcement of, any applicable schedule or timetable of compliance, emission requirement,

standard of performance, emission standard, or prohibition established pursuant to this Act. Civil actions for such enforcement, or to require such enforcement, may be brought by one or more persons on their own behalf. (A) against any person including, but not limited to, a governmental instrumentality or agency, where there is alleged a violation by such person of any such schedule, timetable, emission requirement, standard of performance, emission standard, or prohibition, or (B) against the Secretary where there is alleged a failure of the Secretary to exercise (i) his authority to enforce standards or orders established under this Act; or (ii) any duty established by this Act.

"(2) Nothing in this section shall affect the right of such persons as a class or as individuals under any other law to seek enforcement of such standards or any other relief.

"(3) Prior to instituting any suit, under this subsection, such person or persons shall, by certified or registered mail or personal service, notify (A) the Secretary, (B) an authorized representative of the Secretary, if any, in the field office responsible for the area in which the alleged violation occurs, (C) an authorized representative of the air pollution control agency of the State in which the alleged violation occurs, and (D) the person, or persons alleged to be in violation of such alleged violation. Such notice shall be in accordance with regulations prescribed by the Secretary as to content and specificity. No such suit shall be filed unless such person or persons shall have afforded the Secretary, his representative, or such agency, at least thirty days from the receipt of such notice to institute enforcement proceedings under this Act to abate such alleged violation; except any action under this section to abate a violation of (i) an order issued by the Secretary pursuant to section 116, (ii) clause (A) or (B) of section 113(h)(1), (iii) section 114(f)(1), or (iv) section 115, may be undertaken, after notice, without regard to the time limitations of this subsection. In any such action, the Secretary, if not a party, may intervene as a matter of right.

"(b) The court, in issuing any order in any action brought pursuant to subsection (a) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines such action is in the public interest.

Mr. HRUSKA. Mr. President, it is not my purpose to get into any position that would be obstructive. Frankly, inasmuch as this matter came to my attention for the first time not more than 6 hours ago, it is a little difficult to order one's thoughts and to decide the best course of action to follow.

Had there been timely notice that this section was in the bill, perhaps some Senators would have asked that the bill be referred to the Committee on the Judiciary for consideration of the implications for our judicial system. As was the case in the consumers class action bill, this section deals with an area of governmental function which is under the jurisdiction of that committee.

I am aware of the situation which confronts us. We want to go home to campaign. We want to get out of the Senate and either adjourn sine die before the election or return after the election. I understand the emotional appeal of the bill. I know of its intent. I know all these things are true. But if in the process of taking action which might be ill advised and would result in some of the backlash, as we might call it, that was foretold and forecast for us in the case of S. 3201, I wonder if it would not be better to make haste slowly.

What is the matter with that section? I have here a memorandum that was handed to me by a member of my staff. It outlines some of the basic objections that lie as objections to section 304.

The memorandum starts out this way:

S. 4358—THE CLEAN AIR ACT

SECTION 304, CITIZENS SUITS

A. *The proposal is unprecedented in American history.*

1. The proposal is predicated on the erroneous assumption that officials of the Executive Branch of the United States Government will not perform and carry out their responsibilities and duties under the Clean Air Act. Never before in the history of the United States has the Congress proceeded on the assumption that the Executive Branch will not carry out the Congressional mandate, hence, private citizens shall be given specific statutory authority to compel such officials to do so.

2. The Hearings of the Public Works Committee do not provide either a factual or legal basis which would justify the adoption of this far-reaching and novel procedure wherein private citizens may challenge virtually every decision made by the officials of the Executive Branch in the carrying out of the numerous complex duties and responsibilities imposed by the Clean Air Act.

Mr. President, that involves not only every decision but also every lack of a decision, which the Secretary may engage in for the purpose of implementing this act.

The memorandum further states:

B. *The adoption of Section 304 will result in a multiplicity of suits which will interfere with the Executive's capability of carrying out its duties and responsibilities.*

1. The Clean Air Act provides the regulatory agencies with ample powers to formulate standards and to secure effective enforcement of the regulations. There is no need to delegate enforcement powers, direct or indirect, to private citizens.

2. Section 304 is an open invitation to the institution of Citizens Suits—encouraged by the awarding of litigation expense "including reasonable attorney and expert witness fees . . ." (Section 304(b)). This award may be granted even in a case where the actions "result in successful abatement but do not reach a verdict" (Report p. 38). A multiplicity of actions are sure to follow the enactment of Section 304 regardless of how well the regulatory agencies perform their duties and responsibilities.

Mr. President, I might add that the agency might not be at fault if it does not act as promptly or does not enforce the act as comprehensively and as thoroughly as it would like to do. Some of its capabilities depend on the wisdom of the appropriations process of this Congress.

It would not be the first time that a regulatory act would not have been provided with sufficient funds and manpower to get the job done.

I need refer only to the very recent, classic example brought up in the case of the class action Packer Stockyard Act of 1940, where for decades the provisions of the act were not capable of enforcement, Congress—whether deliberately or not—continually and repeatedly refused to provide the funds and manpower necessary to enforce the provisions of that act.

Notwithstanding the lack of capability to enforce this act, suit after suit after suit could be brought. The functioning of the department could be interfered with, and its time and resources frittered away by responding to these lawsuits. The limited resources we can afford will be needed for the actual implementation of the act.

I continue to read from the memorandum:

3. A multiplicity of suits decided by the several courts will lead to a spate of conflicting decisions.

4. The public interest is not served by subjecting officials of the Executive Branch to harassing litigation. How can they perform the complex administrative and enforcement functions required under the Clean Air Act while simultaneously participating as defendants and/or witnesses in litigation? Instead of forcing such officials to act more effectively the institution of the Citizens Suits will more likely lead to paralysis within the regulatory agency.

Mr. President, I would like to dwell on this point. That is the backlash to which

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we might be invited by reason of section 304.

I continue to read from the memorandum:

C. *The enactment of Section 304 would impose an impossible burden on the already burdened judicial system.*

1. Chief Justice Burger's recent ABA speech and the current hearings of the Judiciary Committee on S. 3201 have clearly demonstrated that the federal judicial system is presently faced with a ever-increasing work load of such a magnitude that Congress should not now extend the courts jurisdiction by the passage of new legislation.

2. Citizens Suits would be particularly burdensome upon the courts as they involve complex factual and legal issues in a new field of

law, one in which the courts have thus far had only limited experience.

3. The Senate Committee on the Judiciary has jurisdiction over, among other things, "(1) Judicial proceedings, civil and criminal, generally. . . . (3) Federal court and judges. . . ." The Senate should suspend consideration of Section 304 pending a study by the Judiciary Committee of the section's probable impact on the integrity of the judicial system and the advisability of now opening the doors of the courts to inumerable Citizens Suits against officials charged with the duty of carrying out the Clean Air Act.

Mr. President, it is my hope that some consideration could be given to the withholding of this section so that it can be considered more thoroughly. It is very doubtful that it would be needed at the outset, before regulations had been completed and determinations made. It is doubtful that this provision is so necessary that we could not go forward with the body of the law without it.

It is my thought that this can be done without jeopardizing the administration of justice and that it can be done without imposing such a burden on the judicial court system. It already takes as long as 3 or 4 years to get to trial. How many more years will we add to this delay if we authorize legislation in section 304?

I recall again the language of the Chief Justice in St. Louis when he explained the load under which the courts are operating:

Editorials demand new laws to control pollution and change the environment, new laws allowing class actions by consumers to protect the public. The difficulty lies in our tendency to meet new and legitimate demands with new law but without consideration for the consequences on the courts.

He might add, the consequences to society of the inability of the courts to attend to the trial of civil cases.

Again, and for the third or fourth time, I want to say I am very concerned with problems of pollution, and with all the measures for this purpose that will be considered by this Congress. My record on that is clear. I cosponsored the administration bill; subscribe to the President's comprehensive plan and program in this field; I am personally convinced of the need.

At the same time, I want the RECORD clear that this Senator would very much regret the enactment into law of a section which would have an opposite effect to that which was intended instead of making progress, it would retard progress, taxing the time, resources, and manpower of the agency.

It is in that spirit that I engage in these remarks. I would like to extend such cooperation as this Senator can in his position on the Committee on the Judiciary or otherwise to get that kind of result and that kind of success.

I yield the floor.

Mr. MUSKIE. Mr. President, I think it might be helpful to Senators reading the RECORD tomorrow to make some observations with respect to section 304, the citizen suits provision, which the distinguished Senator from Nebraska discussed earlier this afternoon. So I ask unanimous consent that the section of the report beginning on page 36 and ending at the top of page 39, which covers the subject of section 304, be printed in the RECORD, at this point.

There being no objection, the extract was ordered to be printed in the RECORD, as follows:

SECTION 304. CITIZEN SUITS

The Committee has established a provision in the bill that would provide citizen participation in the enforcement of standards and regulations established under this Act. The provision in the proposed bill is carefully restricted to actions where violations of standards and regulations or a failure on the part of officials to act are alleged.

Section 304 would not substitute a "common law" or court-developed definition of air quality. An alleged violation of an emission control standard, emission requirement, or a

provision in an implementation plan, would not require reanalysis of technological or other considerations at the enforcement stage. These matters would have been settled in the administrative procedure leading to an implementation plan or emission control provision. Therefore, an objective evidentiary standard would have to be met by the citizen who brings an action under this section.

Government initiative in seeking enforcement under the Clean Air Act has been restrained. Authorizing citizens to bring suits for violations of standards should motivate governmental agencies charged with the responsibility to bring enforcement and abatement proceedings.

In order to further encourage and provide for agency enforcement, the Committee has added a requirement that prior to filing a petition with the court, a citizen or group of citizens would first have to serve notice of intent to file such action on the Federal and State air pollution control agency and the alleged pollutor. Each citizen or group would have to include facts in such notice in accordance with regulations prescribed by the Secretary. The Secretary should prescribe such regulations as soon as possible after enactment, and such regulations should reflect simplicity, clarity, and standardized form. The regulations should not require notice that places impossible or unnecessary burdens on citizens but rather should be confined to requiring information necessary to give a clear indication of the citizens' intent. These regulations might require information regarding the identity and location of alleged pollutor, a brief description of the activity alleged to be in violation, and the provision of law alleged to be violated.

The Committee has provided a period of time after notice before a citizen may file an action. The time between notice and filing of the action should give the administrative enforcement office an opportunity to act on the alleged violation.

It should be emphasized that if the agency had not initiated abatement proceedings following notice or if the citizen believed efforts initiated by the agency to be inadequate, the citizen might choose to file the action. In such case, the courts would be expected to consider the petition against the background of the agency action and could determine that such action would be adequate to justify suspension, dismissal, or consolidation of the citizen petition. On the other hand, if the court viewed the agency action as inadequate, it would have jurisdiction to consider the citizen action notwithstanding any pending agency action.

The Committee emphasizes that if the alleged violation is a failure to comply with an administrative enforcement order, a violation of a standard of performance, or a prohibition or emission standard, there would be no waiting period following notice. It is the Committee's intent that enforcement of these control provisions be immediate, that citizens should be unconstrained to bring these actions, and that the courts should not hesitate to consider them.

Section 304 would provide that a citizen enforcement action might be brought against and individual or a government agency. As recognized under section 118 of the bill, Federal facilities generate considerable air pollution. Since Federal agencies have been notoriously laggard in abating pollution and in requesting appropriations to develop control measures, it is important to provide that citizens can seek, through the courts, to expedite the government performance specifically directed under section 118.

The standards for which enforcement would be sought either under administrative enforcement or through citizen enforcement procedures are the same.

The participation of citizens in the courts seeking enforcement of air quality standards should not result in inconsistent policy. The Clean Air Act should achieve objective standards against which to measure air quality. There should be no inconsistency in the enforcement of such standards. Whether abatement were sought by an agency or by a citizen, there would be a considerable record available to the courts in any enforcement proceeding resulting from the Federal and State administrative standard-setting procedures. Consequently, the factual basis for enforcement of standards would be available at the time enforcement is sought, and the issue before the courts would be a factual one of whether there had been compliance.

The information and other disclosure obligations required throughout the bill are important to the operation of this provision. The Secretary would have a special duty to make meaningful information on emitting sources available to the public on a timely basis.

The provision is drawn to avoid problems raised by class action provisions of the Federal rules of civil procedure, specifically by Rule 23. Section 304 does not authorize a "class action." Instead, it would authorize a private action by any citizen or citizens acting on their own behalf. Questions with respect to traditional "class" actions often involve: (1) identifying a group of people whose interests have been damaged; (2) identifying the amount of total damage to determine jurisdiction qualification; and (3) allocating any damages recovered. None of these points is appropriate in citizens suits seeking abatement of violations of air quality standards. There would be no jurisdictional amount required in section 304 nor is there any provision for the recovery of property or personal damages. It should be noted, however, that the section would spe-

cifically preserve any rights or remedies under any other law. Thus, if damages could be shown, other remedies would remain available. Compliance with standards under this

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Act would not be a defense to a common law action for pollution damages.

Concern was expressed that some lawyers would use section 304 to bring frivolous and harassing actions. The Committee has added a key element in providing that the courts may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such action is in the public interest. The court could thus award costs of litigation to defendants where the litigation was obviously frivolous or harassing. This should have the effect of discouraging abuse of this provision while at the same time encouraging the quality of the action that will be brought.

The Courts should recognize that in bringing legitimate actions under this section citizens would be performing a public service and in such instances the courts should award costs of litigation to such party. This should extend to plaintiffs in actions which result in successful abatement but do not reach a verdict. For instance, if as a result of a citizen proceeding and before a verdict is issued, a defendant abated a violation, the court may award litigation expenses borne by the plaintiffs in prosecuting such actions.

Enforcement of pollution regulations is not a technical matter beyond the competence of the courts. The citizen suit provision is consistent with principles underlying the Clean Air Act, that is the development of identifiable standards of air quality and control measures to implement such standards. Such standards provide manageable and precise benchmarks for enforcement.

The Committee bill would provide in the citizen suit provision that actions will lie against the Secretary for failure to exercise his duties under the Act, including his enforcement duties. The Committee expects that many citizens suits would be of this nature, since such suits would reduce the ultimate burden on the citizen of going forward with the entire action.

Mr. MUSKIE. Mr. President, I think it is important to note the limitations written into this provision of the bill by the committee that are noted in the section of the committee report which I have just inserted in the RECORD.

First of all, the section does not presume that there will be a lack of good will or good faith or dedication on the part of those administering the provisions of the law in doing so.

What we are seeking to establish is a nationwide policy. National ambient air standards implemented by plans developed at the State and local level create potentially enormous enforcement problems for State, local, and regional governments, as well as for the National Government. I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies, they will be able to monitor the potential violations of the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties.

Citizens can be a useful instrument for detecting violations and bringing them to the attention of the enforcement agencies and courts alike. So we have provided this restrictive citizen suit provision for that purpose. We took testimony on this subject. It was strongly supported by legal scholars and several organizations. The provision, as finally written into the bill, is considerably cut down from some of the proposals that were advanced. It is not a class-action provision.

These features might be of interest:

First of all, a citizen suit can be brought only to enforce the provisions of the act or the requirements that are established as a result of the operations of the act. In other words, a citizen suit is limited to the right to seek the enforcement of the provisions of the act.

Second, before bring suit, there is a requirement in this provision that the citizen bring his intention to bring suit to the attention of the local enforcement agency, the thought being that he might trigger administrative action to get the relief that he might otherwise seek in the courts.

I think most citizens, if they were able to trigger such administrative action, would be satisfied with having done so. Thus, they would have done nothing more than the act anticipates —that is, the full and effective enforcement of the provisions of the law.

In those instances where enforcement was not triggered, that is, enforcement action by the administrative agency was not triggered, then it seemed to us the citizen ought to be able to pursue the judicial remedy.

The Senator from Nebraska raised the question of possible harassing suits by citizens. This the committee attempted to discourage by providing that the costs of litigation—including counsel fees—may be awarded by the courts to the defendants in such cases, so that the citizen who brings a harassing suit is subject not only to the loss of his own costs of litigation, but to the burden of bearing the costs of the parties against whom he has brought the suit in the first instances.

I doubt very much that individual citizens would lightly engage this possibility.

These are some of the points it seemed to me ought to be brought to the attention of the Senate, in the light of the remarks made by the distinguished Senator from Nebraska. Other points are covered by the section of the committee report which I have asked to be included in the RECORD.

Mr. BAKER. Mr. President, I call up my amendment which is pending at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 63 insert "(1)" after "(c)" on line 19 and on page 64 between lines 22 and 23 a new paragraph (2) as follows:

"(2) Nothing in this subsection shall be construed as imposing any cost obligation resulting from any warranty requirement imposed by this subsection on any dealer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited."

Mr. BAKER. Mr. President, I wish to amend the amendment by inserting after the word "obligation" in the second line, section (2), the words "on any dealer" before the word "resulting," and striking the words "on any dealer" from the third line.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 63 insert "(1)" after "(c)" on line 19 and on page 64 insert between lines 22 and 23 a new paragraph (2) as follows:

"(2) Nothing in this subsection shall be construed as imposing any cost obligation on any dealer resulting from any warranty requirement imposed by this subsection. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited."

Mr. BAKER. Mr. President, the amendment to S. 4358, to amend the Clean Air Act, and for other purposes, has the effect of excluding from the application of cost responsibility under the warranty section of dealers and distributors.

Although the subject matter of this amendment is addressed in the report on the bill and, therefore, conforms to the intent of the committee, I feel that the matter should be addressed explicitly in the bill.

Mr. President, often obligations and responsibilities under product warranties are assigned or otherwise transferred, to dealers and distributors by manufacturers, often through the leverage of franchise agreements.

Mr. President, the obligations of the manufacturer under this bill to produce a clean car should be borne by the manufacturer and the manufacturer alone. Such obligations should not be transferred to any dealer.

Thus, my amendment would make

it clear that the cost obligations under the warranty required by the statute run against the manufacturer of the automobile and not against dealers and distributors.

Mr. President, it might be pointed out further, that while the amendment provides against the shifting of any cost obligation resulting from the warranty it does not mean the manufacturer could not call upon his dealer network to perform services or adjustments under the warranty. It does mean that the cost of those adjustments and services would be borne by the manufacturer and not the dealer, and that the franchise agreement could not be used as leverage to require the dealer to absorb any related costs.

Mr. MUSKIE. Mr. President, I have discussed this matter with the Senator from Tennessee. Because of the careful consideration he gives to legislation, I think his amendment is an accurate reflection of the intent of the committee. It is a point the committee overlooked in its consideration of the warranty. We focused entirely upon the responsibility of the manufacturer. It did not occur to us that we would be imposing an obligation on the dealer. It was not our intent to do so. I would be willing to accept his amendment, but before doing so I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I rise because I joined with the Senator from Tennessee in offering this amendment.

During the discussion of the bill in committee this issue was raised by the Senator from Tennessee. I join in this matter because of the many messages I was receiving from distributors and dealers of automobiles in my State ask-

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ing if obligations under the warranty ran against the distributors and agencies.

I believe the committee agreed it was not so intended, and I think the Senator from Tennessee is right in offering this clarifying amendment.

It is well to have a provision to reassure many people and I am glad to join with the Senator from Tennessee in the amendment and I support it strongly.

Mr. MUSKIE. Mr. President, I did not realize that the Senator from Michigan wanted to be recognized.

Mr. GRIFFIN. Mr. President, it occurs to me that I had better get my 2 cents worth in here because it looks as if action is about to be taken on an amendment and, frankly, it had been my understanding that this bill will he laid down but no amendment would be acted upon.

I am not at all sure this amendment is all that noncontroversial. I wonder if the Senator from Maine expects to take action on the amendment this evening.

Mr. MUSKIE. Mr. President, I would yield to the desire of Senators. I think when I discussed it with the Senator from Tennessee we looked at this amendment as a clarification of the committee intent.

If it would be helpful to the Senator from Michigan to postpone action on the amendment, I yield to the Senator from Tennessee. We were trying to dispose of whatever we could this evening, not thinking that we were by this amendment getting involved in anything complicated.

Mr. BAKER. Mr. President, if the Senator will yield, I have no objection to putting the amendment over until tomorrow.

I have discussed the amendment with the Senator from Maine (Mr. MUSKIE) and the Senator from Kentucky (Mr. COOPER) on the basis that the amendment was a clarification of

the committee's amendment. If we cannot dispose of it this afternoon, I am willing to put it over until tomorrow.

However, I point out that on page 81 of the bill it states that the provision shall not include any dealer, and the report language itself makes it clear. However, the Senator from Kentucky did not feel it was spelled out with particularity, and we introduced this amendment for the purpose of clarification.

If the Senator from Michigan wants to defer action on the amendment, I am certainly willing to defer it.

Mr. GRIFFIN. I think it would be well to study the effect of the amendment.

Mr. MUSKIE. I have no objection at all.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Is it necessary for me to get unanimous consent to withdraw the amendment at this particular time?

The PRESIDING OFFICER. The Senator from Tennessee may withdraw his amendment or he may leave it as the pending question without any action being taken on it.

Mr. BAKER. Mr. President, I do not have any idea of discommoding the Senate for the transaction of other business it may have while it is waiting for us to act on this amendment, but if it is agreeable to all concerned, I prefer that the amendment remain as the pending business.

Mr. MUSKIE. Mr. President, reserving the right to object, I would like to suggest that I have some purely technical amendments which I would like to offer at this time.

The PRESIDING OFFICER. The Chair would suggest to the Senator from Maine that that might be accomplished with the unanimous consent of the Senate.

Mr. MUSKIE. Then I have no objection to leaving the amendment as the pending business tomorrow.

I ask unanimous consent that technical amendments I send to the desk be considered at this time.

* * * * *

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc. Without objection, the amendments are agreed to en bloc.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

AMENDMENT NO. 930

Mr. COOPER. Mr. President, I send to the desk an amendment in which Senator BAKER and Senator GURNEY join as cosponsors. I do not intend to call it up this evening, but I ask that it be received and printed, and lie on the table.

THE PRESIDING OFFICER. The amendment will be received, printed, and will lie on the table.

Mr. COOPER. I might give notice to the chairman of the subcommittee that it is similar in substance to the amendment I offered in the committee. As the Senator knows so well, the warranty provided for in the bill goes not only to the design and assembly of the automobile propulsion system as it affects emissions, but also to its performance over a period of service, 50,000 miles, under operation by various owners.

I intend to call the amendment up at some time and discuss it, to see if my conception is correct in the view of the committee and the chairman, and then I shall decide whether I shall ask for a vote on it.

Mr. President, I ask unanimous consent that the proposed amendment for myself, Senator BAKER and Senator GURNEY, to be printed at this point in the RECORD, for the information of Members.

There being no objection, the amendment No. 930 was ordered to be printed in the RECORD, as follows:

On page 63, beginning on line 23, strike out all through line 4 on page 64, and insert in lieu thereof the following: "and shall be so warranted for the lifetime of such vehicle or engine. Fifty thousand miles shall be taken as the basis for the lifetime of a vehicle or engine under this section. As a condition to the obligation of manufacturers to correct defects in design, manufacture or assembly, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicle or engines."

On page 64, line 12, strike out the words "adjustment, operation."

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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NATIONAL AIR QUALITY ACT OF 1970

The PRESIDING OFFICER (Mr. CRANSTON). Without objection, the Chair lays before the Senate, Calendar Order No. 1214, S. 4358, which the clerk will state.

The assistant legislative clerk read as follows:

S. 4358, a bill to amend the Clean Air Act and for other purposes.

The Senate resumed the consideration of the bill.

Mr. RANDOLPH. Mr. President, I ask the distinguished Presiding Officer of this body to advise the Senator from West Virginia and his colleagues who sit with him the approximate time that Members of this body will join the Members of the House of Representatives in connection with the joint meeting.

The PRESIDING OFFICER (Mr. CRANSTON). That will depend on the request that will be made by the leadership.

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NATIONAL AIR QUALITY STANDARDS ACT OF 1970

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I shall propound a unanimous-consent request, with the proviso that it be without prejudice to the senior Senator from West Virginia (Mr. RANDOLPH) who is to be recognized under the previous order.

I ask unanimous consent that during further consideration of the pending bill, Calendar No. 1214, S. 4358, the Clean Air Act, debate on any amendment be limited to 1 hour, with the time to be equally divided between the sponsor of the amendment and the manager of the bill; that time on any amendments to amendments, and motions, and appeals, except for motions to lay on the table be limited to 30 minutes, the time to be controlled by the mover of the amendment to the amendment and the manager of the bill; that the time on the bill be limited to 4 hours with the time to be equally divided and controlled between the manager of the bill and the minority leader or his designee: that no amendments not germane to the provisions of the bill be in order; and that time under the bill may be allotted by

those in control thereof to any Senator on any amendment, motion, or appeal.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, reserving the right to object, I am among those who find some aspects of the bill very controversial.

I want to indicate that I was disturbed originally because it was suggested that only 2 hours of debate be granted on the bill. At my request, the distinguished majority leader and the distinguished acting majority leader have extended that period to 4 hours which will provide additional time in the event the 1 hour and the half hour allotted to a particular amendment might not be sufficient in any particular situation.

This is a very, very important piece of legislation. It is going to have a far-reaching impact on the whole economy, to say nothing of the automobile industry. Yet, I realize that there is only so much time that can profitably be devoted in the Senate in terms of having someone listen to those who want to speak.

I feel that this will be satisfactory and that we can move along and deal with the issues that need to be dealt with.

Mr. President, I do not object.

Mr. GURNEY. Mr. President, reserving the right to object, I want to make an inquiry about the unanimous-consent request.

I intend to offer an amendment to the Dole amendment, a perfecting amendment. With regard to the time provision in that amendment, as I understand it, under the unanimous-consent request, mine would be an amendment to an amendment. I could offer that at any time after the Dole amendment is offered, and I would have a half hour on that amendment.

Mr. GRIFFIN. Mr. President, it is a half hour on the amendment.

Mr. GURNEY. The Senator is correct.

Mr. COOPER. Mr. President, I have no objection to the agreement. However, representing the minority side, I would like to ask if the Senator from Maine (Mr. MUSKIE) has been consulted and if the chairman of the committee, the Senator from West Virginia (Mr. RANDOLPH), has been consulted.

Mr. BYRD of West Virginia. Mr. President, in response to the question of the able Senator from Kentucky, may I say that the Senator from Maine (Mr. MUSKIE) on yesterday afternoon was agreeable to entering into such an agreement. He thought that we were on the verge of having such an agreement. However, at that time there was some objection from the other side. I am confident that there will be no objection from the Senator from Maine, because on yesterday he had thought we were about to reach such an agreement, and he had worked for it.

Mr. COOPER. Mr. President, the Senator from West Virginia was out of the city, I think.

Mr. BYRD of West Virginia. Mr. President, I do not think there would be any objection on his part. I believe I can confidently state that, Mr. President.

Mr. SPONG. Mr. President, was the consultation of the Senator from West Virginia (Mr. BYRD) with the Senator from Maine (Mr. MUSKIE) about the possible time limitation prior to or after the remarks of the Senator from Nebraska (Mr. HRUSKA) on yesterday?

Mr. BYRD of West Virginia. Mr. President, I think I can answer the Senator. My consultation with the Senator from Maine on yesterday oc-

curred following any remarks by the Senator from Nebraska (Mr. HRUSKA).

The PRESIDING OFFICER. Is there objection?

Mr. GRIFFIN. Mr. President, further reserving the right to object, I am thinking now in terms of the fact that we have a policy luncheon and have some matters on the agenda which will require my attention. When will the time begin to run?

Mr. MANSFIELD. I might say that an amendment is pending now. I do not think there will be much difficulty on that amendment, however.

Mr. GRIFFIN. In the meantime, the time will be taken out of the 1 hour allotted to the pending amendment, which will be satisfactory. It would not take away from the time on the bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Chair will see to it that nothing is done before the Republican conference and the Democratic Policy Committee have completed their discussions and until some speakers are on the floor. The time will not begin to run until the distinguished Senator from West Virginia has completed his remarks.

Mr. MANSFIELD. Mr. President, by necessity, the distinguished senior Senator from Washington (Mr. MAGNUSON) could not be present during the consideration of the Clean Air Act amendments. The Senate will not be without his thoughts and views on this measure, however, Senator MAGNUSON has prepared a statement on this antipollution bill and in it he offers his strong support, and recounts for the Senate some of his own achievements and those of the committee he chairs—the Committee on Commerce—in this most important area.

I ask unanimous consent that Senator MAGNUSON's statement be printed at this point in the RECORD.

There being no objection, Senator MAGNUSON's statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR MAGNUSON

Mr. President, the Senator from Maine (Mr. Muskie) and his colleagues on the Public Works Committee are to be congratulated for the firm, responsible legislative steps they have taken in S. 4358 to bring automobile air pollution under control. By legislatively mandating the production of low-emission vehicles, Senator Muskie and his colleagues have demonstrated resolve to bring about the production of low-emission vehicles which would significantly reduce air pollution in this country.

Low-emission vehicle development has been a matter of continuing concern to the Senate and the Public Works Committee and Commerce Committee. In 1967 joint hearings were held to explore electric car technology. Those initial hearings were followed in May 1968 by joint hearings to explore steam car technology. On the basis of these hearings and other investigations, the Senate Commerce Committee published a report entitled "The Search for a Low-emission Vehicle" which concluded that the existing legislative approach to vehicular air pollution was inadequate, that other technologies for vehicle propulsion were feasible, and that a new low-emission vehicle had to be produced if we were going to stop the air pollution epidemic.

In January of this year the Senate Commerce Committee and the Public Works Committee again jointly searched for low-emission vehicles in hearings on S. 3072, the Federal Low-Emission Vehicle Procurement bill—a bill which was unanimously approved by this body on March 26th of this year and which now awaits action in the House. This procurement legislation is an essential first step toward realizing the goal of low-emission vehicles by 1975. By offering a guaranteed government market to both innovative producers and the automobile industry itself, the legislation can stimulate early development and production of smogless cars. The premium paid by the government for these cars can help defray costs resulting from necessary acceleration of present research, development and production programs. The procurement legislation also offers vehicle manufacturers the opportunity to fleet test under controlled conditions their low-emission vehicles to insure satisfactory con-

sumer performance when full production is undertaken.

In addition to the joint efforts of the Senate Commerce Committee and the Senate Public Works Committee in the area of automobile air pollution control, both Committees have cooperated in developing legislative provisions authorizing the setting of air pollution standards for other transportation modes, including aircraft and vessels. In March the Commerce Committee participated

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in joint hearings on the legislative proposals from which the reported air pollution bill was derived. I am happy to say that the Public Works Committee accepted several suggestions which our Committee made concerning the proper involvement of the Federal Aviation Administration and the Coast Guard when setting standards and conducting compliance tests on aircraft and vessels, matters within the jurisdiction of the Senate Commerce Committee.

Ordinarily the Senate Commerce Committee would request re-referral of a piece of legislation which so profoundly affects transportation matters. But because of the joint efforts already undertaken, because of the lateness of the session, and because of the compelling need to take positive action on this legislation now, no such request will be made.

I support S. 4358 and urge its swift enactment.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia (Mr. RANDOLPH) is recognized.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the time under the agreement not begin to run against the Senator from West Virginia (Mr. RANDOLPH) until such time as he has consumed, if he does so consume, 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RANDOLPH. Mr. President, our attention to this legislation is of the utmost importance. I am sure that my able colleague on the committee, the junior Senator from Tennessee (Mr. BAKER), would feel it appropriate for me to reemphasize, although perhaps not in his exact words, what he said within the committee at the time we were working on the measure. He indicated on that occasion that the National Air Quality Standards Act of 1970, could well be the most significant domestic measure that would be presented during the 91st Congress.

I echo that expression. I have stated that the matter is of extreme importance to many segments of American life including, of course, all the people of the United States.

In this legislation it is proposed that we establish a national policy for the protection of the health of the citizens of our Republic. I think it should be very clearly understood that this is not the beginning. As we come today, and as we began yesterday, the consideration of this legislation we were building on the legislative framework of the Clean Air Act of 1965 and the 1967 Air Quality Act amendments.

So I think it is pertinent to say that within the Committee on Public Works, and especially within the Subcommittee on Air and Water Pollution, we have been giving attention to these matters, responsible to our colleagues in the Senate, a Senate that I think is responsive to the American people, although we are not always in agreement on the procedures that are proposed in this measure.

The pending bill would require the establishment within 3 to 5 years of its enactment State implementation plans to achieve national ambient air standards to protect the health of citizens of this country.

I underscore that this objective may be very difficult to achieve in this time bracket. It is my belief that

an extension of this proposed schedule will probably be required in certain instances.

However, I feel that if we can achieve the objectives in the hoped-for time period we would control and abate today's air pollution and also prevent in part the occurrence of future air pollution problems, and we would do so reasonably and realistically without doing violence to legitimate and necessary business. In the process, both industry and Government will be hard pressed to provide the required capital and manpower for what I know will be a mammoth, but necessary, undertaking.

This legislation will test the willingness of the citizens of this Nation to control and abate environmental pollution. Ultimately every individual citizen would be called on to pay the increased costs associated with the achievement of an environment that protects and improves the public health within this country.

I think it is necessary also to stress the fact that effective implementation in 3 years would require a major commitment by Government and industry. The pending bill contains authorizations of $1.190 billion. This is the commitment of the Federal Government, a commitment, of course, that must be followed within the appropriation process. I have said on many occasions that often we authorize from the standing committees programs for which we have extreme difficulty in providing the necessary funds with which to do the job. It is going to be necessary, if this task is to be completed, that we have the funds to do the work. That is why I call the attention of my colleagues again not only to the authorization activity which results in the measure before us, but also to the responsibility which this body will have to appropriate the required funds.

Equally important will be the commitment of those units of government at the State and local level, and certainly the private sector of our economy. Sometimes we are not as eager as we should be to commend business and industry when, by and large, with exceptions—and this is understandable—business and industry attempt with Congress to move forward in these matters, making their own viewpoints known. Sometimes, very candidly, the differences that exist are, in reality, our strengths. We do not have to be uniform in the presentation of a bill to have a unity on the measure because certainly the detail provisions must be subject to very close scrutiny. But it is the purpose of this legislation, which I hope the Senate will approve, as well as the actual words of the act as presented.

I earlier mentioned that we have a framework of action. It is a framework which began with Clean Air Act of 1965 and the Air Quality Control Act of 1967. Frankly, there has been the necessity to change that program and there will be the necessity in the months and years ahead to refine the pending measure.

The National Air Quality Standards Act of 1970, I believe, will accelerate the effort to provide clean air through additional policies and procedures for action. It is important that we act and that we do so not just in a desire to act but to do it with knowledge and intelligence. I hope we are doing that in this legislation.

Progress in implementing the policies in this legislation will receive continuous review by the Committee on Public Works over the 3-year authorization period. Where necessary, further congressional action will be provided. During this time all affect-

ed parties will have an opportunity to present their views. Under review by the committee will be the commitment of both industry and Government to air quality.

I want to state again with emphasis that I would rather have us feel that this is not a matter of Government as a senior partner and industry as a junior partner. I would like to think of this as a partnership, a full partnership, a partnership of understanding, a partnership of concern, a partnership of action in reference to what we are doing in this legislation.

I call attention to the fact that in the past the Federal staffing and funding have left much room for improvement, as has the commitment of funds and personnel and staff at each level of Government.

In 1967, it was estimated that the staff of the National Air Pollution Control Administration would have to increase to 1,900 in fiscal 1970 if the Air Quality Act of 1967 were to be implemented in its full potential. Yet, as of May 1, 1970, NAPCA had only 971 full time permanent workers on its staff as compared with provision for 1,116 in its 1968 budget. This inadequacy has been the chief deterrent to progress in the NAPCA effort to abate air pollution. If implementation to the act of 1970 is to be achieved, the administration—and I am not critical of the administration when I make this statement—must fund and staff the National Air Pollution Control Administration at the required level.

We must have the development of new and improved emission control systems for both stationary and moving sources. Funds were provided in the Air Quality Act of 1967 to stimulate development of the required technology. This research and development effort has been severly underfunded in the intervening years, a situation that must be remedied.

I call upon the Members of the Senate and the House, I call upon all the people of the country who are concerned with this problem, to see that this situation is remedied in the months ahead. For example, we placed in the 1967 act authorization for a 5-year research and development program for the control of sulfur oxide emissions from stationary sources. This program called for a Federal expenditure of $394 million, including $215 million for the period from 1968 through 1970. Yet, in this 3-year period the estimated actual expenditure has been only $82 million, or $123 million behind schedule. The estimated expenditure for fiscal 1971 was $94 million, as compared to the currently planned expenditure of $26 million.

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I reviewed this research effort in some detail in my Senate remarks on S. 4092 and the current fuels and energy crisis on July 16, 1970, and in testimony on the bill before the Interior Committee on September 2, 1970.

This was in connection with my remarks when I introduced a bill, with the cosponsorship of more than 60 of my colleagues, to establish a Fuels and Energy Commission in this country, keeping in mind environmental factors. That was on September 2, before a subcommittee of the Committee on Interior and Insular Affairs, in which this situation, which certainly is a crisis, was stressed.

The remedies to air pollution, however, must not rely solely on add-on devices. Insufficient attention has been given to such other alternatives as fuel cleaning, more efficient methods for combusting fuels, and the de-

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velopment of synthetic fuels with low potential for environmental impact.

The committee, therefore, has expanded the research and development authority under section 104 of the Air Quality Act. The development of control methods, process changes, and improved operating procedures all offer potential remedies to reduce atmospheric emissions. These alternatives can be funded and developed under that act. The private sector can actively participate as well as support its own development efforts. In concert between the Federal Government and industry there can be accelerated development of new and improved means to reduce atmospheric emissions.

The legislation being debated today reflects an evolutionary developmental effort by providing for the establishment of performance standards for new stationary sources. This provision would require the application of the most effective means of preventing and controlling air pollution for new stationary sources.

The overriding purpose of performance standards for new stationary sources is to prevent the occurrence of new air pollution problems. These standards will insure that when an industry moves into any area with low pollution levels, that this new facility does not appreciably degrade the existing air quality. The first plant in a new area must meet the same standards of performance as subsequent plants, thus spreading the responsibility equally among all facilities for maintaining clean air.

This legislation also provides for emission standards for hazardous materials. Concern is for material which in trace quantities in the ambient air contribute to a high risk of serious irreversible or incapacitating effects on health. It is anticipated that this provision will be employed to control only those materials which are extremely hazardous or toxic to people. It is anticipated that a limited number of pollutants come within this category.

It may be desirable to provide a total prohibition of emissions for these contaminants, but it is recognized that emissions may be possible without endangering public health. The committee intended that the burden of providing that emissions are possible without endangering the health of persons should rest with the emitter.

An administrative procedure, Mr. President, as I conclude my remarks, is provided for those industries that discharge hazardous materials to present scientific and medical evidence that the public health is not in danger when low level discharge of these materials is permitted. It is intended that the Secretary, in establishing the emission standards for these materials, would give recognition to the fact that trace materials may occur as impurities in many types of combustion. In this regard, section 115 would apply to primary producers of hazardous materials rather than to general combustion processes in which these materials appear as pervasive but in almost immeasurably small quantities.

Mr. President, as I indicated in my first few words, this is a significant approach to a very pressing problem. I think that in the 91st Congress, we cannot overstate the gravity of the situation, and the compelling need to enact such legislation. I think it is without question one of the most far-reaching environmental protection measures to be considered, perhaps not only in this Congress, but over a considerable period of years. It is also one which will have broad economic impact. I recognize

this and I am concerned to a great degree, as I have stated within the subcommittee, within the committee, and again on the Senate floor. I must remind Americans that there will be price tags on the costs which they will pay for goods and services.

And so, as we desire. and properly so, to enhance the quality of our environment, to provide cleaner air, that Americans may live in greater health, we know that what we are doing will be felt, not so much today or tomorrow, but it will be felt by those generations that will be active in the United States of America 10, 15, or 20 years from now.

For the reasons that I have stated, Mr. President—and, of course, there are other reasons which members of our committee, and especially our subcommittee, have presented and will present—I urge the enactment of S. 4358.

If this bill is passed, and if this bill or a revised measure goes to the President of the United States and is signed into law, I feel that we can proceed with the accelerated effort to improve the air which is breathed by the increasing population of men, women, and children of this country—some 209 million persons living in this Nation today. What the figures will be in a few years we do not know, except that we have every indication that our population will increase, and the people in this country will desire, in large numbers, to continue to live in the urban and the closely clustered suburban areas of our country. So this is a real problem that concerns all of us, not just industry and business and Government, but the people of the United States as a whole; and I hope that we here today, and subsequently on the amendments that shall be voted, will make a further commitment to do this job and to do it, Mr. President, while we still have time.

Mr. GURNEY. Mr. President, I support S. 4358, the National Air Quality Standards Act of 1970, which was reported by our Committee on Public Works on September 19, 1970, by a unanimous vote of its members.

I have been privileged to serve on the Committee on Public Works and I wish to take this occasion to pay particular tribute to the leadership of our chairman, the distinguished senior Senator from West Virginia (Mr. RANDOLPH), and to the leadership of the ranking minority member, the distinguished Senator from Kentucky (Mr. COOPER) and also that of chairman of the Subcommittee on Pollution, the distinguished Senator from Maine (Mr. MUSKIE) and the ranking member on the subcommittee, the distinguished Senator from Delaware (Mr. BOGGS). They all are to be commended upon their work on this bill.

Mr. President, the need for improving the quality of the air nationwide has been apparent for some time, but I think it was brought home to us all at the end of last July and in the first week of August when almost the entire east coast of the United States was smothered in a choking smog. As we looked at our great cities through watery eyes the realization came, I think, with great urgency that the Congress must act decisively about this incredible state of affairs. The quest for solutions to our national problems of air pollution which a decade ago had been the regard of merely a handful of scientists and forward-looking conservationists has become an issue of a national overwhelming concern.

As President Nixon said in his February message on the environment:

The time has come when we can wait no longer to repair the damage already done and to establish new criteria to guide us in the future.

Autos and trucks, generally agreed to be the biggest single source of pollutants in the air, came in for a great deal of criticism last August. Fifteen States filed suits in the Supreme Court in an attempt to force automakers to produce pollution-free cars at the earliest possible date.

We have had our share of the prophets of doom and gloom who have told us again and yet again that the battle has been lost before it has been joined and that our planet is inexorably succumbing to the poison of its own chemical and natural waste products.

I do not share, nor can I ever share, such pessimism. It seems to me that the genius of the American spirit which produced so much for so many can, if properly channeled and directed, be turned to the problem of successfully cleaning up our environment. It is axiomatic that this battle will be a costly one and I think it deserves the highest priority in our national councils. If the fight against polluted air, filthy water, and solid waste is to be won, we must have a united attack upon it by all levels of Government: Federal, local, and State, by

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industry, and by individuals throughout the Nation. I think the prospects of mounting such a victorious offensive are real and substantial. I think we are on the way. I think that this bill, S. 4358, the National Air Quality Standards Act of 1970, which has been presented to the Senate by the distinguished chairman of the Public Works Committee, is a significant contribution to that fight.

The National Air Pollution Control Administration tells us that five chemical contaminants are the most offensive and dangerous factors in air pollution today. The most pervasive of these is carbon monoxide, of which we have 100 million tons per year coming largely from autos, trucks, and buses. It has been stated by the National Institutes of Health that even in small amounts, carbon monoxide diminishes the reflexes of individuals and impairs their judgment.

Sulfur dioxide, of which 33 million tons are dumped into the air annually, is an irritating gas which comes mostly from burning of oil and coal and it adversely affects the individual's lungs and his throat. If he has any respiratory difficulty at all, be it minor such as a cold, or major such as emphysema, sulfur oxide aggravates that ailment.

Particulates, of which 28 million tons find their way into the air in the United States annually, are tiny bits of solid matter, some of which are extremely dangerous to the respiratory system. Again, they come mainly from the burning of coal and from smokestacks which are not properly filtered.

Hydrocarbons, of which half of the 32-million-ton total is each year discharged from trucks and autos, are reputed to be a key ingredient in the smog that surrounds so many of our cities these days.

Nitrogen oxides, of which 20 million tons yearly find their way into our air stream, is another smog-inducing element, which daily pours out of motor vehicle tailpipes and also from combustion of fuel, coal, oil, and so forth, at stationary sources.

Tallied up, the public health officials estimate that 91 million tons of toxic material annually go into our atmosphere as a result of the internal combustion engines in automobiles, trucks, and buses. Our bill

is aimed specifically at reduction of the toxic substances poured into the air by automobiles and by stationary users of fuels in our hope that we can significantly lower the level of air contamination in future years. We cannot, obviously, outlaw the internal combustion engine; we cannot forbid the burning of coal or oil. The problem, as I see it, is one of balancing: How we can develop standards and procedures and controls which will reduce significantly the present level of air contamination, while at the same time not causing a severe economic dislocation. It is not sufficient at this time to point an accusatory finger at industry, or at the consuming public, or at the utilities, or at the car manufacturers, or at any group within our society and try to make them the villain of this tableau. There is no villain. There is only a problem which needs to be remedied. Our bill in my judgment is a rational and viable approach to this problem.

In many ways the bill presently under consideration is a trail-blazer on the part of Congress. We have spelled out and specifically written into this act the emission standards to be imposed on sources of pollution, and when we did that, we did it with the realization that we were entering unknown and unexplored territory. I think the situation in our country demands this kind of action. But, like a surgeon's most powerful drug, such a drug is fraught with danger unless expertly administered and unless the patient is safeguarded against its deleterious side effects. And so, while I support wholeheartedly the intent of our committee in this piece of legislation, I would offer several caveats which I think must be recognized from the outset.

I am troubled by two portions of the bill: First, the establishment within the bill of emission standards for motor vehicles to be established and made operational by January 1, 1975, and second, by the provision which relates to judicial review of the Secretary of Health, Education, and Welfare's determination in this regard. On the question of setting standards by 1975, our committee has been informed by the entire automobile industry that the technology to effect the desired result will not be available for wholesale use on millions of motor vehicles by 1975. I do not know if this contention on the part of the automobile industry is, in fact, correct, and as I pointed out in my individual views which were submitted with the report, no one knows whether this contention is correct, since hearings were not held on this specific subject. As I stated in my individual views, I think that mandating standards set out in this bill for a January 1, 1975, achievement is open to the criticism that it is arbitrary. Nevertheless, I think that the January 1971 deadline can be left in the bill provided we also include some sensible way to prevent economic dislocation should the technology not be available on that date. The inclusion of the deadline is a goal for automakers to speed such technological development. Hopefully they will achieve it. If they do not, I would suggest that the manufacturer or manufacturers be allowed to apply for two extensions of 1 year each in order to make such performance and emission standards a reality. The bill as it now stands provides for a 1-year extension subject to judicial review in the U.S. Court of Appeals for the District of Columbia circuit. My suggestion would be that the Secretary of Health, Education, and Welfare should be empowered to make such an extension or extensions on the facts presented to him, and that a determination on

his part either to grant or withhold such a suspension should not be subject to judicial review.

I say this not because of any resentment or dislike for the process of judicial review. On the contrary, I think judicial review is eminently suitable in most instances. I think, however, that this is an extraordinary case and that the process of judicial review would not serve the best interests of the general public. I think that it would be potentially time consuming and might very well delay, instead of hasten, the implementation date of emission standards which we all want to see. We have reposed great authority and responsibility in our bill in the Secretary of Health, Education, and Welfare. It is he who is responsible for the promulgation of air quality standards and their supervision and enforcement.

In the final analysis, in my judgment, it should be the Secretary who should have the authority to make the determination about whether a suspension of the January 1, 1975, deadline is desirable and/or necessary. The Secretary has experts at his disposal within the Department of Health, Education, and Welfare; he has developed a wealth of technical knowledge within the Department on this subject. His engineers have been working closely with the auto industry for some time now on solving the air pollution problem. There is no one in or out of Government better able to make a sound judgment on whether or not the auto manufacturers can meet the January 1, 1975, deadline. If evidence presented to the Secretary shows that the automakers have made good faith attempts to lick this technological problem and have failed to meet standards set in the bill by January 1, 1975, he can, and should, grant suspension.

I think we can rely on the good faith and the bona fides of the Secretary of Health, Education, and Welfare. I do not think that he would use the suspension power which we have granted him in this bill lightly or casually. It is my understanding that he would only grant such a suspension after a long and exhaustive administrative proceeding at which all points of view, including the point of view of the environmentalist and conservationist groups, had been heard, considered, and digested. To subject his final determination in this regard to judicial review would seem to me to be unwise and unwarranted. As I have said, it might well delay the implementation process of this bill.

While there are other more technical corrections which I think we can make in the bill, they are for the most part perfecting amendments as distinguished from substantive changes. I think, on the whole, that the Congress should feel a sense of accomplishment with this bill. I think we have met the problem of air pollution head on. There is no shirking or avoiding in this bill; it is a sweeping public statement by Congress that it is a national goal and a high national priority to diminish the level of air pollution which we currently have in the Nation and a full-fledged confrontation with this great national problem.

Many, many long hours of thought and work have gone into this bill. It is a comprehensive and, to a certain extent, complex piece of legislation, but we are dealing with a far-reaching and a very complex subject that needs and demands the frontal attack which we in the Committee of Public Works have mounted by this bill. It is probably not a perfect piece of legislation. After all, we are none

of us experts on chemistry or in chemical contaminants, but we have availed ourselves of the expertise which we could find extant in the executive

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branch, and we have heard from industry and numerous environmental experts in the private sector. It is my hope that Congress will pass this bill and send it to the President. I have every confidence that the President will sign it into law and that we will be on our way to finding a national solution for the staggering health problem of air pollution.

Mr. President, I yield back the remainder of my time and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SPONG). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. CASE). The Senator from Tennessee is recognized for 5 minutes.

Mr. BAKER. Mr. President, a parliamentary inquiry. Is the pending amendment my amendment No. 926?

The PRESIDING OFFICER. Would the Senator please restate his parliamentary inquiry in loud and ringing tones. The Chair did not hear the Senator.

Mr. BAKER. The Senator from Tennessee apologizes to the Chair. His parliamentary inquiry was whether the pending business is his amendment No. 926.

The PRESIDING OFFICER (Mr. CASE). The Senator is correct.

Mr. BAKER. I thank the Chair.

Mr. President, I spoke on this amendment yesterday and pointed out that its purpose and intent is to exempt from the provisions of the warranty section of the bill a cost obligation running against the dealer or distributor.

It is clear from the bill, and I think it is clear from the language of the report, that no such result was intended and that the warranty provisions would run entirely against the manufacturer who, after all, is responsible for designing and manufacturing the automobile, which is the subject of this title.

But to make it abundantly clear, so that there can be no misunderstanding, the Senator from Tennessee felt it would be appropriate to provide that specific exemption in the body of the bill itself.

That is the purpose of this amendment. It was my understanding yesterday that the manager of the bill, the distinguished Senator from Maine (Mr. MUSKIE), was agreeable to accepting it. Since yesterday there has been the opportunity to have the amendment printed. It is on the desk of every Senator now. I have had occasion to discuss it with a number of Senators on both sides of the aisle.

I am prepared at this time to yield back the remainder of my time.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. BAKER. Mr. President, I would be happy to yield to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I take just a moment to reaffirm my support for this amendment, which I expressed on yesterday.

It does reflect the intent of the legislation and of the committee and clarifies that intent.

For that reason I support it.

Mr. President, I yield back the remainder of my time.

Mr. BAKER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. BAKER. Mr. President, I yield move that we reconsider the vote by which the amendment was agreed to.

Mr. MUSKIE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MUSKIE. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill insert a new section as follows:

"SEC. 14. If Reorganization Plan No. 3 of 1970 becomes effective prior to the date of enactment of this Act, wherever in any amendment made by this Act the term (1) "Secretary" or "Secretary of Health, Education, and Welfare" is used it means the Administrator of the Environmental Protection Agency, or (2) "Department of Health, Education, and Welfare" is used it means the Environmental Protection Agency."

Mr. MUSKIE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for 5 minutes.

Mr. MUSKIE. Mr. President, I will not take 5 minutes to explain the amendment. This is a technical amendment. It is intended to make clear that if the President's proposed Environmental Protection Agency becomes law under the reorganization plan which he submitted to Congress, all references in the bill to the Department of Health, Education, and Welfare will relate to the new agency.

The amendment is necesary in the event that Agency becomes the administering Agency of this program.

Mr. President, I do not think there is any question about the amendment. If there is none, I yield back the remainder of my time.

Mr. BOGGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

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NATIONAL AIR QUALITY STANDARDS ACT OF 1970

The Senate continued with the consideration of the bill (S. 4358) to amend the Clean Air Act, and for other purposes.

AMENDMENT NO. 928

Mr. DOLE. Mr. President, I call up amendment No. 928.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to state the amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment will be printed in the RECORD.

The amendment reads as follows:

On page 48, beginning with line 11, strike out all through line 6 on page 52, and insert in lieu thereof the following:

"(4)(A) Within twenty-four months but

no later than twelve months before the effective date of standards established pursuant to this subsection any manufacturer or manufacturers may file with the Secretary an application for a public hearing on the question of a suspension of the effective date of such standards for one year. Upon receipt of such application the Secretary shall promptly hold a hearing to enable such manufacturer or manufacturers and any other interested person to present information relevant to implementation of the standards.

"(B) In connection with any hearing under this subsection, the Secretary may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, the district court of the United States for any district in which such is found or resides or transacts business, upon application by the United States and after notice to such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) Within six months after such receipt of the application for suspension the Secretary shall, if he finds upon a preponderance of evidence adduced at such hearing that a suspension is essential to the public interest and the general welfare of the United States, that all possible and good faith efforts have been made to meet the standards established by this subsection, and that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for sufficient period to achieve compliance prior to the effective date of such standards even with the full applications of section 309 of this Act, recommend to Congress that (i) the effective date of such standard be suspended for a period of only one year, and (ii) the emission standard that should be applied during any such suspension which standard shall reflect the greatest degree or emission control possible through the use of technology available.

"(D) The findings and recommendations required by this subsection shall not be subject to judicial review. Such recommendations shall be effective as law at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the recommendation is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor such recommendation.

"(E) For the purpose of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

"(F) Nothing in this paragraph shall extend the effective date of any emission standard established pursuant to this subsection for more than one year."

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. Mr. President, we are under a time limitation of 1 hour.

The PRESIDING OFFICER. The Senator is correct, 1 hour, 30 minutes on each side.

How much time does the Senator from Kansas yield himself?

Mr. DOLE. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 10 minutes.

Mr. DOLE. Mr. President, in 1968, moving sources were responsible for more than 42 percent of the total emissions of five major pollutants—including 64 percent of the carbon monoxide and 50 percent of the hydrocarbons. In health effects, these pollutants may cause cancer, headache, dizziness, nausea, metabolic and respiratory diseases, and the impairment of mental processes. In particular, the President pointed out in his message on the environment that—

Studies show that exposure to 10 parts per million of carbon monoxide for approximately 8 hours may dull mental performance. Such levels of carbon monoxide are commonly found in cities throughout the world. In heavy traffic situations, levels of 70, 80 or 100 parts per million are not uncommon for short periods.

Solving our air pollution problems therefore depends on the achievement of significant reductions in auto-

mobile emissions. Because of this fact, the Public Works Committee determined that the establishment of motor vehicle emission standards is a policy decision so important to public health that it should be made by the Congress, rather than the Secretary of Health, Education, and Welfare. Because Congress has made the establishment of emission standards a question of congressional policy, it should retain the authority to review that policy decision on the basis of social, health, and economic considerations. Congress will have a complete record on the basis of the Secretary's findings, which will enable it to act expeditiously, if action is required.

Further, the argument for judicial review is convincing, but I cannot agree with that approach for several reasons. First, there is an increasing tendency to delegate responsibility for policy decisions to the judiciary. While that branch of Government is less susceptible to political and economic pressures, it has been increasingly subjected to the pressure of a growing backlog of cases. The senior Senator from Nebraska, in discussing section 304 of this bill, noted yesterday that Chief Justice Burger had called attention to the plight of the judicial system. The words of the Chief Justice are worthy of our serious consideration:

> Meanwhile, not a week passes without speeches in Congress and elsewhere, and editorials, demanding new laws, new laws to control pollution, new laws to change the environment, new laws to allow class actions by consumers to protect the public; but the difficulty lies in our tendency to meet new and legitimate demands for new laws but without adequate considerations for the consequences on the courts.

The Senator from Nebraska also inserted the appendix of the fiscal year 1969 annual report of the Director of the Administrative Office of the U.S. Courts. It contained convincing figures that indicate the Congress must be very careful not to further overload the judicial system.

Although the provision for judicial review contained in the bill provides that the automobile manufacturers' petition would be expedited, the decision of the U.S. Court of Appeals for the District of Columbia is subject to review by the U.S. Supreme Court. It is likely that if the automobile manufacturers do not appeal, other interested persons or the United States will. Furthermore, there are other procedural safeguards incumbent in the judicial process that may delay the final decision on whether an extension will be granted until the issue becomes moot.

I believe congressional review, based on the Secretary's findings and recommendations, is the best answer to the difficult problem created by the establishment of a 1975 deadline.

Mr. President, let me read some excerpts from the amendment so that it may be fully understood.

The amendment reads in part:

> "(4) (A) Within twenty-four months but no later than twelve months before the effective date of standards established pursuant to this subsection any manufacturer or manufacturers may file with the Secretary an application for a public hearing on the question of a suspension of the effective date of such standards for one year. Upon receipt of such application, the Secretary shall promptly hold a hearing to enable such manufacturer or manufacturers and any other interested person to present information relevant to implementation of the standards."

The next section indicates that in connection with the hearings, of course, certain subpoenas and other procedures will be followed.

Section (C) states:

> "(C) Within six months after such receipt of the application for suspension the Secretary shall, if he finds upon a preponderance

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> of evidence adduced at such hearing that a

suspension is essential to the public interest and the general welfare of the United States, that all possible and good faith efforts have been made to meet the standards established by this subsection, and that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for sufficient period to achieve compliance prior to the effective date of such standards even with the full applications of section 309 of this Act, recommend to Congress that (i) the effective date of such standard be suspended for a period of only one year, and (ii) the emission standard that should be applied during any such suspension which standard shall reflect the greatest degree or emission control possible through the use of technology available."

Mr. President, I specifically note the language in section (D):

"(D) The findings and recommendations required by this subsection shall not be subject to judicial review. Such recommendations shall be effective as law at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the recommendation is transmitted to it unless, between the date of transmittal and the end of the sixty-day period either House passes a resolution stating in substance that the House does not favor such recommendation."

Mr. President, the chairman of our subcommittee and the ranking minority member of the subcommittee stressed time and time again that we are making very difficult policy decisions. They have been made time after time by Congress, but we have to accept the responsibility for making these very difficult decisions. The same is true with respect to emission standards for model year 1975. It seems to me that if we wish to be consistent, Congress must accept responsibility for extension of that deadline in the event the standards cannot be met.

While I have no quarrel with judicial review as an orderly procedure, in this instance where Congress imposes standards, if good faith efforts are made, an extension might be necessary. Why, should not Congress have the final word on whether or not the extension should be granted? By Congress making the final judgment, the automobile industry would not have to wait 1, 3, 4, 5, 6 months, or 2 years for a court to act, but would have a decision within 60 days.

I have no pride of authorship in the amendment. I believe it fits the situation. It puts the matter squarely up to Congress: Should we pass a law which everyone agrees imposes very strict standards, and then back away from it and say, "Leave it up to the Court or the Secretary." I feel if we are willing to impose deadlines today we should be willing to determine in the future whether the deadlines should be extended.

Therefore, I strongly suggest this amendment does offer some compromise.

Mr. President, in conclusion I wish to say that this amendment is the result of efforts by the subcommittee and the full committee to find the best possible avenue of resolving a very difficult problem. If we tell a great industry it must meet certain standards by January 1, 1975, or the 1975 model year, then as indicated earlier, we must accept the responsibility for making the final judgment. My amendment would be a substitute for language now contained in the bill and would give Congress this vital responsibility. It is patterned very much after the reorganization acts submitted by the executive branch from time to time.

If either the House or the Senate do not accept the recommendations of the Secretary, for a 1-year extension, then there is not a 1-year extension, but at least we then come to grips with the problem we created by the passage of this legislation. It occurs to me that in fairness to the industry, to the courts, and the Secretary, this should be a partnership. There should be a coming together and this amend-

ment would provide that compromise because in the first instance the Secretary holds the hearings, he makes the recommendations, and we have 60 legislative days in which to act or not to act.

It does offer a compromise and we would not "pass the buck," so to speak, to the judiciary system of the United States.

Mr. BOGGS. Mr. President, will the Senator yield for 3 minutes?

Mr. DOLE. I yield 3 minutes to the Senator from Delaware.

Mr. BOGGS. Mr. President, I wish to commend the distinguished Senator from Kansas (Mr. DOLE) for offering this amendment, together with his excellent presentation and explanation of the amendment.

I wish to express my strong support for the amendment.

One of the most significant aspects of this legislation is the deadline proposed under section 202(b) which requires a specific degree of emission control by the 1975 automobile model year.

We must realize that a possibility exists that good faith effort will still find the automobile industry short of that low-pollution goal. Therefore, the committee wisely provided a provision for secretarial review, on the question of granting relief for 1 year in the deadline. Under the proposal made by the Senator from Kentucky (Mr. COOPER) and the Senator from Tennessee (Mr. BAKER) and incorporated into the bill, the Secretary's decision would be subject to judicial review.

The Dole amendment preserves the basic thrust of section 202(b)(4), but returns the responsibility for review of the Secretary's decision to the Congress.

It is my view that congressional review is more appropriate in light of the responsibility that the Congress is assuming in establishing a specific standard of emissions control.

The amendment of the Senator from Kansas (Mr. DOLE) encourages the Congress to meet that responsibility.

I am happy to join with him, and I do support his amendment.

I thank the Senator for yielding.

Mr. MUSKIE. Mr. President, will the Senator yield to me for a minute or two?

Mr. DOLE. I yield.

The PRESIDING OFFICER. The Senator from Maine has his own time.

Mr. MUSKIE. Mr. President, I support the amendment and the time in opposition should go to someone else. I would suggest, if he is willing, the Senator from Kentucky take the time in opposition.

The PRESIDING OFFICER. Who yields time?

Mr. COOPER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 1 minute.

Mr. COOPER. Mr. President, the Senator from Delaware is controlling the time.

Mr. BOGGS. The Senator from Kansas is controlling time for those in favor.

Mr. MUSKIE. Technically I control time of those against.

Mr. COOPER. I understand the Senator from Florida (Mr. GURNEY) will offer an amendment to the amendment of the Senator from Kansas. Is it the Senator's intent to offer that amendment now?

Mr. GURNEY. Mr. President, will the Senator yield?

Mr. COOPER. I yield.

Mr. GURNEY. Once we debate the issues on the Dole amendment I do intend to offer an amendment to the Dole amendment to change the time provision in the Dole amendment.

Mr. COOPER. Is the Senator prepared to offer his amendment now?

Mr. RANDOLPH. Mr. President, I cannot hear the discussion that is going on. I am not critical but I make the point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate is not in order and the Senate will be in order.

Since the Senator from Maine is supporting the amendment, the minority leader or his designee will control time in opposition.

Mr. BOGGS. Mr. President, the Senator from Kentucky (Mr. COOPER) is in opposition.

The PRESIDING OFFICER. The Senator from Kentucky has control of the time in opposition. Does the Senator yield himself time?

Mr. COOPER. I yield myself 2 minutes.

Mr. President, if the Senator from Florida is not ready to send his amendment to the Dole amendment to the desk, I am ready to present my case against the Dole amendment.

Mr. GURNEY. Mr. President, if the Senator would yield, I shall be very happy to send my amendment to the desk. Then we can dispose of the whole thing.

Mr. COOPER. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Florida?

Mr. DOLE. Mr. President, I yield 1 minute to the Senator from Florida.

Mr. GURNEY. Mr. President, I send an amendment to the amendment to the desk.

The PRESIDING OFFICER. The Chair is advised that the Senator may not offer his amendment until all time is yielded back or used on the pending amendment.

Mr. GURNEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GURNEY. Can the amendment simply be read? That is all I want to do.

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The PRESIDING OFFICER. The amendment may be read.

The assistant legislative clerk read the amendments intended to be proposed to the amendment of Mr. DOLE, as follows:

On page 1, beginning on line 1, strike "Within twenty-four months but no later than twelve months".

On page 1, line 2, capitalize the word "before".

On page 1, line 4, after the word "application" insert the following: "in a timely manner to be determined by the Secretary".

Mr. GURNEY. Mr. President, I shall take just a minute to explain my amendment briefly, so the Senator from Kentucky can have the two amendments before him and present his argument to both.

All this amendment does is change the time provision in the Dole amendment in which application can be made to the Secretary for relief under the bill. The Dole amendment provides that application cannot be made before 2 years prior to January 1, 1975, when the standards take effect, and they cannot be made any later than 1 year prior to that date. My amendment simply provides that the automobile manufacturers may make application——

The PRESIDING OFFICER. The time of the Senator from Florida has expired.

Mr. DOLE. Mr. President, I yield 1 minute to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GURNEY. My amendment

merely provides that the automobile manufacturers may go to the Secretary at any time, in a manner to be determined timely by him, to present their case.

The reason why I am offering the amendment is that, as I understand it, a great deal of leadtime is necessary, somewhere between 2 and 2½ years, of tooling-up-time processes for the manufacturers, and that they need a longer time than 24 months.

Mr. DOLE. Mr. President, I yield 2 minutes to the Senator from Maine (Mr. MUSKIE).

Mr. MUSKIE. Mr. President, two issues have been raised. I would like to respond to the first one initially in the 2 minutes the Senator has just given me.

The issue raised by the Senator from Florida I shall discuss later, but, with respect to the Dole amendment, I support it. I supported it in committee. It was offered in committee as a substitute for the judicial review provision which is in the bill.

I support it for these reasons, all of which I think have been touched upon by the distinguished Senator from Kansas:

First of all, we are making a congressional policy decision if we enact the law. It is a serious one and without precedent. We have done it because of the urgency of the problem. If the policy is changed, only the Congress should change it. The advantage of the Dole amendment is that it would bring the decision back to Congress to be made. For that reason I support the Dole amendment.

The second reason why I support the Dole amendment is that this is a technical question. I think the judiciary, within the judicial review provisions in the bill, would find it difficult to come to grips with technical decisions of this complexity. On the other hand, in the administration we have an agency established by Congress which has developed the expertise, know-how, and background to review any request for a change in the deadline. The Dole amendment would put that machinery into motion. After it had completed its work, the Secretary would then make a recommendation to the Congress, and the policy decision would be made here, with the benefit of all the background developed by the Secretary in the administrative process.

So I think the Dole amendment is an ideal way to get at the question of whether or not to postpone the deadline at some point in the future. For that reason, I support it. I think it makes a great deal of sense. It was offered in committee. The vote was very close. As I recall it, it was 8 to 6. So the committee was pretty closely divided on it. For that reason, I have no hesitation to support this amendment, as I did in committee, to support it on the floor, and to urge the Senate to support it, as well.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I ask the Senator from Kentucky to yield me time?

Mr. COOPER. I shall yield the Senator, but first I yield myself 30 seconds.

This is an important amendment. It involves the only possibility of review, what I would call due process of law, in this provision of the bill. I can attest that it is hard to understand the bill, with all its provisions, even after working on it for weeks and months. The Senator from Maine knows that so well.

I would like to ask unanimous consent that we may have a quorum call, without the time being taken from either side, in order to get more Sena-

tors to listen to the debate on this bill which will have great impact upon the economic and social fabric of this country.

Mr. MUSKIE. Mr. President, is this to be a live quorum?

Mr. COOPER. No.

Mr. MUSKIE. I have no objection.

The PRESIDING OFFICER. The clerk will call the roll, and without objection the time will be taken from neither side.

The assistant legislative clerk proceeded to call the roll.

Mr. COOPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. COOPER. Mr. President, I yield to the distinguished Senator from Michigan (Mr. GRIFFIN), but since this a statement, as I understand it, or a discussion of the bill, I ask that the time be taken from the time allotted to the bill.

The PRESIDING OFFICER. The Senator from Michigan himself has the time on the bill.

Mr. GRIFFIN. I thank the Senator. Mr. President, I yield myself 15 minutes.

Mr. President, while Senators are considering the merits of the Dole amendment and the proposed amendment thereto offered by the Senator from Florida (Mr. GURNEY), I should like to address myself to some broader aspects of the bill.

I am deeply concerned about this bill because it introduces a novel concept to automobile emission control—the concept of brinkmanship. An industry pivotal to the U.S. economy is to be required by statute to meet standards which the committee itself acknowledges cannot be met with existing technology.

Mr. President, brinkmanship is risky business. It is especially risky when it is applied to a key industry, and when it is based upon such questionable premises.

Mr. President, there can be no argument about the need for establishing and pursuing air quality standards that will protect the public health. We are long past the day when anyone could think that improving our air quality will be neither painful nor expensive.

But another unavoidable fact is that air pollution—whether coming from factory smokestacks, automobile tailpipes, or backyard incinerators—is the end product of an otherwise highly successful economic system which is second only to the environment in assuring the physical well-being of most Americans.

Obviously, to the extent that it is reasonably necessary to penalize the economy to gain cleaner air, we must do so. But if we penalize the economy excessively—beyond what is necessary—we shall win no victory.

In that light, it becomes important to point up some of the problems which title 2 of the bill is likely to cause the automobile industry. It is significant that the most far reaching of these provisions was devised when the bill was considered by the subcommittee in executive session, long after hearings had been concluded. Indeed, as I understand it, there has never been testimony in either the House or Senate on the concepts put forth in section 202 of this bill. Because that is the situation, I want to develop some facts for the record—facts which otherwise might not come to the attention of Senators because of the absence of hearings on section 202.

Interestingly enough, for Congress to establish standards, as proposed in section 202 without even a hearing or

the benefit of written comment, is to set an example which no administrative agency would dare to follow.

Amid the current fad to blame the automobile industry for a variety of problems, Congress should not lose sight of the fact that the manufacture, sale and servicing of motor vehicles is a vital industry in the U.S. economy. The availability of automotive transportation is a basic factor in the personal economy and daily living of most of the identical people we seek to protect from the effects of pollution.

Mr. President, 800,000 Americans are directly dependent upon the automobile industry for their livelihoods and more than 14 million other jobs are dependent

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upon its products—in all, 28 percent of all private nonfarm employment in the United States. Cars and trucks generate 10 percent of all taxes collected by Federal, State, and local governments combined. Expenditures for automotive transportation account for more than 16 percent of our gross national product. Even a slight dip in auto sales, to say nothing of a strike at General Motors, sends shock waves throughout the financial community.

This bill, as written, proposes to give the automobile industry from 18 to 30 months to make a technological breakthrough that has withstood more than 15 years of research—and even this illogically short time frame ignores procedural requirements of the legislation which could easily consume in excess of 12 months.

This bill, as written, would saddle the automobile industry with additional problems, harassments, and unreasonable demands and expenses at a time when rapidly rising costs are already putting it under a severe handicap in competing with foreign producers—to the detriment of our balance of payments.

In short, Mr. President, this bill holds a gun at the head of the American automobile industry in a very dangerous game of economic roulette.

Such a monumental gamble should not be taken unless we are reasonably sure the potential results are worth the risk we incur. Let us look, therefore, at what it is that we actually stand to gain.

Section 202 of the bill would require that, by 1975, emissions by hydrocarbons and carbon monoxide be reduced by 90 percent below the 1970 levels. It would require that oxides of nitrogen, which are not now federally regulated, undergo a similar reduction 5 years after standards are set. Since the Secretary is expected to set standards in 1971, the 90-percent reduction in nitrogen oxides would be required in 1976.

At first blush, those sound like impressive gains. They are, in effect, a 5-year advance over the timetable that the President, supported by the Department of Health, Education, and Welfare, announced last February.

However, I think we need to look more closely at these legislatively imposed standards if we are to put them into perspective with the full record as it stands today.

To start with, it is interesting to note that last month the Council on Environmental Quality submitted data attributing 42 percent of manmade pollutants to transportation. I understand that the automobile share is set at 39 percent—39 percent, not the 60 to 90 percent that has been so frequently charged. It is a serious mistake to pin too much hope on cleaning up the air by cracking down on automobiles. Total elimination of automobile pollution would still leave

us with more than 60 percent of the total pollution problem to deal with.

Yet this bill concentrates its heaviest fire on the smaller part of the job. It is another serious mistake to fall into the trap of thinking that stationary sources of pollution can be offset by reducing automotive pollution. It may be recalled that Mayor Lindsay recently enunciated that fallacious policy in reference to allowing expansion of Consolidated Edison's Astoria plant to relieve New York City's severe power shortage. He indicated it would be possible to offset added pollution from the powerplant by curtailing auto emissions—but the apparent logic of this position is quite misleading.

The fact is that the photochemical smog and the carbon monoxide concentrations caused, in large part, by automotive emissions are not to be confused with the kind of air pollution that brought on London's famous "killer fog" of 1952 or the 1948 tragedy in Donora, Pa. Those catastrophes were not caused by hydrocarbons, oxides of nitrogen, or carbon monoxide—the major automotive pollutants. They were caused by the combination of sulfur oxides and particulates, which come from stationary sources, including power generating plants. Motor vehicles contribute about 1 percent of the sulfur oxides and, even with leaded gasoline, about 3 percent of the particulates in our national air. I might mention that London's progress in cleaning its atmosphere has been accomplished by putting controls on everything but automotive vehicles.

Furthermore, the automobile contributes 39 percent of our total manmade air pollution only when pollutants are measured on a tonnage basis, primarily because of carbon monoxide. On the same weight basis, however, it takes something like 220 times as much carbon monoxide to attain the same "threshold health effect" as that which results from sulfur oxides. This was the judgment of California's health authorities, who have had more actual experience with pollution than anybody else in setting their ambient air standards.

The point is that when pollutants are measured by their effects on health rather than by their gross weight, the automobile's role in the picture drops off sharply. In the June 1970 issue of Environmental Science and Technology, two University of California professors concluded that automobiles are responsible for only 12 percent of total U.S. air pollution when measured by pollution harmfulness.

Whichever figure we choose to accept—12 percent or 39 percent—much of this automotive pollution is being produced by older uncontrolled automobiles which predate the use of present emission controls. The committee report itself makes this clear. These older cars are being scrapped at the rate of more than 7 million a year. Let us look from an emissions viewpoint at the new and used cars which are replacing them.

Beginning in 1963, automobiles were equipped with crankcase ventilation systems which eliminate 20 percent of the hydrocarbon emissions from an uncontrolled vehicle.

Another 60 percent of the hydrocarbons and all of the carbon monoxide comes from the exhaust pipe. Beginning with the 1966 models in California and 1968 nationwide, exhaust controls substantially lessened that source of emissions. In the 1968 and 1969 models, 62 percent of hydrocarbons and 54 percent of carbon monoxide emissions were eliminated. Improvements in 1970 controls raised these percentages to 69 percent for

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hydrocarbons and 70 percent for carbon monoxide.

So, Mr. President, as we consider this bill, it is very important to keep in mind that the automobile industry already—due to their own efforts and due, certainly, to the prodding by governments, both State and Federal, has already about eliminated 70 percent of the pollutants coming out of automobile exhausts. Now, this bill would require the further elimination of 90 percent of the remaining 30 percent within a very short period of time—by 1975—even though the technology to do so does not exist today.

Of the 31 percent of the remaining hydrocarbon emissions, nearly two-thirds resulted from evaporation from the gas tank and carburetor. Evaporative control systems on all 1971 cars have virtually shut off that source of pollution.

All told, then, 80 percent of the hydrocarbons and up to 70 percent of the carbon monoxide emissions have been eliminated on 1971 models. Oxides of nitrogen will come under control in California in 1971 and nationwide in 1973.

The committee report cites testimony from the National Air Pollution Control Administration to the effect that these gains are illusory because present exhaust controls quickly lose their efficiency through use. However, NAPCA qualified this conclusion by noting that it was based on a broad interpretation of field surveillance tests conducted by the State of California.

Actually, these tests show that the durability of exhaust control systems has improved year by year with the technology. For 1969 cars, carbon monoxide emissions were more than 15 percent below the standard even for the greatest amounts of driving mileage reported. Even though hydrocarbon deterioration has been more resistant to solution, less than 6 percent of the hydrocarbon reduction has been found to be lost through deterioration at 50,000 miles of driving.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. GRIFFIN. I yield myself an additional 10 minutes.

Some experts allege that lead additives are a major factor in the deterioration of emission control. Reduction in the amounts of lead additives in gasoline appears to be a further step in improving the long-range performance of emission controls. More rapid progress will be made in this area as petroleum companies move almost daily to expand the availability of such fuels, for which the major part of current U.S. auto engine production is designed.

The best proof of how well present emission controls work is the fact that air quality already is improving as far as automotive emissions are concerned. Even in Los Angeles, with its steady increase in automotive population, the peak output of hydrocarbons and carbon monoxide was reached in 1966 and has been

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steadily declining ever since. At the current rate—including the rate of automotive growth—even if no improvements in emission controls were made beyond the 1971 level, by 1980 Los Angeles would have less automotive hydrocarbons in its air than it had in 1940. Its carbon monoxide levels would be back to where they were late in the forties.

This much has been accomplished with relatively little additional cost to the car buyer and with relatively little sacrifice in vehicle performance. From here on, however, the costs go up sharply and the actual improvement to the atmosphere becomes less and less at each step.

Consider, for example, what the section 202 standards—which the automobile industry says it has no reason to hope it can meet by 1975—would accomplish as compared with the 1975 standards set by HEW, which the automobile industry has expressed confidence it can meet.

Whether or not our confidence in the industry's ability exceeds its own, the fact is that meeting the requirements of section 202 would result in only minimal improvements in air quality.

Since 80 percent of the hydrocarbon emissions already have been eliminated in the 1971 cars, under either the HEW requirement or section 202, the control would be nearly total by 1975—95 percent in the one instance and 98 percent in the other. Not a very significant difference.

Section 202 would bring oxides of nitrogen under 90 percent control 5 years after standards are set, compared with HEW's 83 percent by 1975. In New York City's own "Emission Inventory Summary," incidentally, only 18 percent of total emissions of oxides of nitrogen were attributed to surface transportation. That would seem to indicate that again section 202 offers a very limited amount of improvement over HEW standards—about a 1-percent reduction of oxides of nitrogen in New York City, for example.

Reduction of carbon monoxide levels would be 97 percent under section 202 and 86 percent under the HEW timetable. The significance of the gain, however, is somewhat dimmed by recent scientific findings that nature renders atmospheric carbon monoxide harmless in about a month's time. Formerly, it was believed that carbon monoxide lasted about 3 years, which would gravely increase the danger of cumulative buildup.

Unquestionably, any improvement at all in air purity is much to be desired. The desire, however, should not be allowed to overcome our sense of the practical. Whe are not living in Camelot, where the very elements could be controlled by decree.

Mr. President, in my several years in both houses of this Congress, I have never encountered so remarkable a statement as this passage from the committee report pertaining to section 202:

> The Secretary is expected to press for the deve'opment and application of improved technology rather than being limited by that which exists. In other words, *standards should be a function of the degree of control required, not the degree of technology available today.*

Mr. President, I suggest that confirms the statement I have made over and over again, that the technology for achieving the standards set in legislative concrete by this bill are not available.

Also according to the report, the standards envisioned by section 202 are derived from a paper presented in June of this year at the annual meeting of the Air Pollution Control Association by D. S. Barth of HEW.

What the report does not mention is that Mr. Barth, in presenting his paper, clearly and repeatedly stated that he was preparing a groundwork for standards rather than proposing firm conclusions on which official standards should be based.

In his calculations, Mr. Barth used what can only be called a "best ball" approach which at each step compounded the safety factors for health protection.

For present air quality, he used one-time peak values rather than statistically valid maximum readings. For desired air quality, he applied the lowest values ever reported, not the most widely-accepted values of what is needed to avoid detrimental effects on health. For the background concentration factor, he used the highest reported values of "natural pollution"

rather than more generally accepted figures. And in anticipating the future growth of the automotive population, he went far beyond most estimates including that published by the Department of Transportation.

By using this "best ball" approach —that is, by assuming the worst at each stage of his calculations—Mr. Barth arrived at hypothetical vehicle emission goals which are from six to 20 times more severe than would be indicated if more widely accepted values were applied.

That is the basis of the standards proposed in section 202 with what the committee report refers to as, quote, "requirements for margins of safety," end quote.

If we are to believe both the bill and the automobile industry—one saying that these standards must be met by 1976 at the latest and the other saying that the technology for doing it is not yet in sight—we could be headed for an economic and transportation crisis in 5 or 6 years' time.

In this connection, I have mentioned that the automobile industry believed it could meet the 1975 standards proposed by the administration. I should also mention that there was one qualification to their promise. At the White House meeting last November, industry officials indicated their confidence in meeting the standards if and only if the 1970–71 Federal standards were stabilized through the 1974 model year. They emphasized that meeting the 1975 goals would require the full concentration of their efforts without being diverted onto interim goals. Imposing new 1975 standards and requiring a change of research effort at this point can only handicap the effort to meet either set of goals.

This is especially so because the automobile industry does not have 5 years, or even 6 years the bill provides at the discretion of the Secretary of Health, Education, and Welfare, in which to come up with the answer. The leadtimes involved in the mass production of a machine as complex as the automobile at reasonable cost and acceptable reliability drastically reduce the grace period that the manufacturers would have.

If the provisions of the present bill were to take effect at the end of this session, the industry would have 3½ years left before starting up 1975 model production. Three and a half years is about the normal production leadtime, particularly for sophisticated antipolluting systems which may require major changes in the configuration of the vehicle. Even if production leadtime is compressed to 2 years, simple arithmetic shows that automotive engineers would have only 18 months in which to invent the new approach or 30 months if the industry can gain the 1 year only suspension of the standards provided for in the bill.

Actually, the industry does not have that much time because procedural requirements grant the Secretary 6 months in which to make his momentous decision on whether to grant the suspension. Then appellate provisions are provided—and I am sure they will be used no matter what the Secretary's decision is. These appellate provisions include an appeal to the circuit court of appeals which, I conclude, cannot consume less than 3 months, and application to the Supreme Court for a writ of certiorari which almost certainly would consume at least 3 months more.

During this period, cars cannot be built for the simple reason that the emissions systems are integral to the car design and the design cannot be established until the standards are set. In this connection, it is important to bear in mind that the Secretary, if he extends the statutory deadline, must establish new standards which are the

most stringent that the technology can meet.

Even if the Secretary does this concurrently with his decision to extend the deadline, car manufacturers would be unable to build to that specification until they know for certain that the Secretary's judgment will not be overturned.

A few days ago, the junior Senator from Wisconsin (Mr. NELSON) released a letter he had written to the chairman of the Senate Public Works Committee. In that letter, which received wide publicity, the Senator criticized the automobile industry for claiming that it cannot do by 1975 what a group of students had already accomplished in the 1970 cross-country clean air car race.

Judging from what I have read in the papers and seen on television, that seemed like a plausible charge, and it was certainly a serious one. I therefore decided to look into the matter to determine for myself whether or not the automobile manufacturers are trying to pull the wool over our eyes.

I should like to summarize what I found out.

My colleague, the junior Senator from Wisconsin, said that the automobile companies "know the results—of the clean air car race—and are deeply embarrassed by them."

Of course the manufacturers know the results of the race. To their credit, sev-

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eral of them were deeply involved in it—providing vehicles, special equipment, financing, testing facilities, and expert technical advice.

The junior Senator from Wisconsin went on to discuss the winning car, a highly modified 1971 Ford Capri. He said:

> What the giants of the automobile industry are claiming cannot be done, was demonstrated to the American public by a team of night students at Wayne State who are employed as technicians by Ford Motor Co. . . . without the financial or technical resources available to the auto industry.

The facts are these: The winning car was put together by a team of five students and two other young engineers. Three of the students and the other two team members are highly regarded engineers at Ford Motor Co. Without taking away from their accomplishment in the least, I was sure they would be the first to acknowledge that they received not only encouragement but financial and technical assistance as well from Ford Motor Co., which worked closely with them in selecting their emission control equipment.

Now let us consider what it is that the vehicle and others in the race are supposed to have demonstrated. It was said:

> The student-modified internal combustion engine using nonleaded gasoline surpassed not only the proposed 1975 Federal standards, but were far below the proposed 1980 Federal standards which your subcommittee has recommended be advanced for 1975. The above results demonstrate the fact that a 1971 Ford internal combustion engine can meet the proposed 1980 standards today.

It was also claimed that a total of nine of the cars in the race met the proposed 1975 standards and that two of them met the proposed 1980 standards.

The facts are that nobody knows whether any of these cars met the 1975 or the 1980 proposed standards. The reason is that none of them were tested by using either the present or the proposed Federal emission test procedures. This is not just a technicality. When we are measuring pollution in terms of parts per million—and that is what we are talking about—different test procedures can yield results that vary by 100 percent or more. That is why detailed test pro-

cedure requirements are an integral part of Federal emission standards.

The test procedures used during the clean air car race were less stringent and yielded lower results than would be obtained from the Federal Government's present and proposed procedures. Consequently, the race results cannot be equated with the results that are obtained when a car is tested for emissions certification by the Department of Health, Education, and Welfare.

For the moment, let us assume that nine cars in the race would meet the proposed 1975 Federal standards and two would meet the proposed 1980 standards if tested in the prescribed manner.

It was argued that such results support those provisions of the legislation proposed by your Subcommittee on Air and Water Pollution which would require compliance with the proposed 1980 Federal emission standards by 1975. Senator NELSON said:

> One can also conclude that the accomplishments of the Wayne State University students with a minimum of experience with a major manufacturer should be well within the expertise of all segments of the entire automobile industry.

Of course, there is no question that automobile manufacturers could build cars exactly like the Wayne State Capri. The question is whether this would be a practical and realistic way of meeting the emission standards we are now being asked to freeze into law.

Let us take a look at that car. To make up for the loss of performance resulting from the complex emission control equipment added to the car, an engine three times as big as the standard engine was installed. To make up for the loss of performance and fuel economy resulting from the extra weight and the emission equipment, the car was lightened by substituting plastic for much of the original steel and glass and removing virtually all of the interior trim and unessential hardware—hardly a practical substitution for normal use.

The principal modifications, of course, were the addition of an extremely complex and costly emission control system, including four platinum catalytic converters. Aside from the very high cost of the platinum in the exhaust system, the fact is that there is now a worldwide shortage of platinum and it is totally impractical to contemplate use in production line cars of large quantities of this precious material, such as was used in the winning car.

Furthermore, the car and its emission control equipment were specifically designed merely to meet the requirements of the race—that means designed to get across the country once, in good time and with minimum emissions. They were not designed to perform satisfactorily for 50,000 miles as demanded by the warranty provisions of the clean air bill. In fact, the winning car suffered a 60-percent deterioration in hydrocarbon control on its 3,600-mile trip.

The car entered in the race was a car that would cost substantially more than today's cars to build, and would probably require frequent replacement of its platinum converters.

In short, there is no basis for the conclusion that this car or any other car in the race represents an immediately available, practical way to meet the emission standards included in the bill. All that is proved by the results of the race is that it is possible, if cost and practicality are no object, to build a car that comes close to meeting the proposed standards for somewhat less than 4,000 miles.

A serious problem in the bill is the warranty provision. The warranty provision is impractical, and I suggest that it may be unenforceable. In the first place, a warranty based on emission standards requires some

method of measurement in the field. I understand that at present it would require some $50,000 worth of equipment and several trained technicians and would take 13 hours of time to measure and test the performance of one car.

I am aware of the fact that the committee report speaks about development by the HEW Secretary of a quick-testing procedure.

Interestingly enough, I find no reference whatever to this in the bill. There is no assurance whatever that the HEW Secretary will be able to develop such a quick-testing procedure —or when he will be able to do so. Many people have been trying to develop a quick, inexpensive testing procedure—and they have had little success so far.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRIFFIN. Mr. President, I yield myself an additional 2 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for an additional 2 minutes.

Mr. GRIFFIN. Mr. President, the goals set forth in this bill are commendable. There is no reason that we should not put as much pressure as we can reasonably place upon the automobile industry to meet reasonable goals to control the pollution caused by automobiles. I am all for that.

I am very deeply concerned, however, that in this particular legislation, the Senate seems to place itself in the position of scientists and automotive engineers. As Senators, we do not have the expertise that is needed. And, obviously, the committee is not willing to delegate any authority to those who do have expertise.

President Kennedy announced a goal when he said we would go to the moon by a certain date. But no one suggested a law that would have put space industries out of business if we had fallen short in developing the needed technology.

Certainly some expertise—more expertise than the junior Senator from Michigan has, should be employed in determining what is feasible and reasonable in this field.

The Senator from Kansas has offered an amendment, and I know he believes it moves in the right direction. Frankly, I think it does not. He would provide for a 1-year extension period dependent upon another vote of Congress.

Frankly, I think one of the problems with this legislation right now is that—and I say this with all due respect for my colleagues and without pointing the finger at either side of the aisle—too many of the decisions with regard to this bill are being made on a political basis.

I know it is difficult politically to vote for any amendment that would be characterized by the press as weakening the clean air bill. Everyone is for clean air and against pollution.

But without an adequate understanding of what is really involved in some respects, I am afraid that some Senators—and I say this with all due respect—will be casting votes on a political basis.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRIFFIN. Mr President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 2 additional minutes.

Mr. GRIFFIN. If these standards prove to be completely unrealistic and threaten to put the automobile industry out of business, the amendment offered would

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require the industry to come back to Congress for what I fear could be another political decision. I believe the

decision should be in the hands of an administrator who, surrounded with experts, can look at facts objectively.

I believe the amendment offered by the Senator from Florida is helpful and that it would provide a litle more flexibility. I shall vote for it, but, unfortunately, I shall then vote against the amendment offered by the Senator from Kansas.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. GRIFFIN. I believe we are back on the amendment now.

Mr. DOLE. Mr. President, I yield myself 2 minutes. First, I wish to inquire of the time remaining.

The PRESIDING OFFICER. Thirty minutes remain on the amendment.

Mr. DOLE. How much time remains on my side?

The PRESIDING OFFICER. The Senator has 25 minutes remaining.

Mr. DOLE. Mr. President, I wish to say to the distinguished Senator from Michigan, first of all, that I commend him for pointing out and emphasizing what a tremendous burden we place on the automobile industry. I share the views expressed by the distinguished Senator from Michigan. As he indicated, there is a tremendous problem and my point is we create the problem by fixing a date for imposition of certain standards.

We should be willing to face up to that problem in the future. Congress should be willing, at that time, to make a judgment on whether there should be an extension. We should not pass that judgment on to the courts.

I have been doing some checking to find out how long it takes for a case to go from the court of appeals to the U.S. Supreme Court. I would guess the average time would be several months and perhaps a year or longer. It occurs to me that if we are willing in the first instance to impose stringent standards, we should not duck the responsibility when it comes to changing those standards. I hope the Senate will accept the principle that we do provide for an extension. My substitute provides for an extension. After a determination by the Secretary of Health, Education, and Welfare, who has the expertise, and in the event the House and the Senate do not act, the deadline is then extended for not more than 1 year. I am unable to say what will happen in conference. The House bill has no such provision.

I know the Senator is aware that we are making an effort to be of assistance to him and others.

The PRESIDING OFFICER. Who yields time?

Mr. COOPER. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. COOPER. Mr. President, I understand the pending business is the question of whether or not the Dole amendment will be substituted for section 202(b)4 in the bill, which was a subsection placed in the bill in committee by an amendment offered by the Senator from Tennessee and me. The choice is clear cut.

I might say that the Senate can make a choice of the type review it wants. The original draft of the bill in committee provided no review of the effective date to the manufacturer. The bill, as we all know, provides that by January 1, 1975, or by the time the 1975 model is ready to be introduced into commerce, the automobile must be in conformity with standards proposed by the bill to be fixed by law. I support that provision.

As I said, under early drafts in the committee, if it should develop that in the intervening time the automobile companies could prove that using all available technology, and

proceeding in good faith, they were not able to meet these standards, they would have no way to present it except that Congress might act as it saw fit.

I know of no other pollution control bill, which does not provide for a review of administrative decisions. I think it is unfair to any group of citizens in our country not to provide for them a method of review, a method whereby they can be dealt with fairly. That is the principle of due process which is imbedded, not only in our Constitution but throughout our legal system. It is a process provided by the 14th amendment to the Constitution.

The amendment which the Senator from Tennessee (Mr. BAKER) and I offered, in Committee, which was adopted by a vote of 10 to 3 in committee—equally divided on both sides of the aisle, majority and minority—is identical with the Dole amendment in the first requirement. In both provisions the manufacturers, upon application to the Secretary, may present their case and must prove that they have acted in good faith and exhausted all reasonable possibilities to come into conformity with the required standards.

Following the administrative proceeding, the Secretary makes a decision either granting or denying an extension of 1 year. At that point our amendments differ.

The amendment of the Senator from Kansas provides that the Secretary's decision granting an extension shall become final within 60 days, unless within that period one House of Congress by resolution overturns that decision. The amendment which was adopted in committee provides that within 30 days of the Secretary's decision the applicant or other interested party can appeal to the U.S. Court of Appeals for the District of Columbia. There is no further trial, the action of the court of appeals shall be taken on the record made by the Secretary; and such record shall be presumed to be correct. Following the court of appeals decision the applicant, or any other intervenor could carry the case to the Supreme Court, if he so desired.

It has been said this is a long procedure, but if it took longer than 1 year the case would become moot. There is no remission of emission standards and requirements during the period of appeal.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COOPER. Mr. President, I yield myself 2 additional minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 2 additional minutes.

Mr. COOPER. Mr. President, the committee will make every provision to expedite the matter. I think it is eminently fair.

Under the present law, the law we are amending, the Secretary is required every year to make reports to Congress and, of course, Congress, at any time, can take whatever action it desires.

I point out that the amendment of the Senator from Kansas would provide 60 days between the finding of the Secretary and the required action by Congress.

Mr. President, when we think of the year and one-half spent in developing this bill, I submit that 60 days permits little if any substantive consideration by Congress. In fact, if one house acted quickly, the other house would be frozen out of any action.

I can think of no instance where there is not provided to our citizens an opportunity to have an administrative decision reviewed by the courts. The courts by design and tradition are insulated and therefore are less subject to pressure and emotion than

even Congress. I think judicial review is best in this case.

This remedy is available not only to the manufacturers. The Secretary could permit other interested parties to intervene. The Sierra Club, other conservationists, and Mr. Nader could present their case. They, too, could appeal to the courts if they so desired.

I ask the Senate to return the constitutional method of due process. I think it is fair to all parties concerned and fair to the Congress.

Mr. BAKER. Mr. President, will the Senator yield me 5 minutes?

Mr. COOPER. I yield 5 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I oppose the Dole amendment. I support the committee version. I have no great quarrel with the Dole proposal. The Congress is faced with this basic problem. Do we require in this bill an accomplishment for the automobile industry that we are not certain can be accomplished, at least by the time set forth—1975? The answer we have made in the bill we have reported is, "Yes, we do," and I support that for the reasons I noted in my opening statement.

The committee has decided that the automobile industry can accomplish the emissions standards we require in the bill in the time established. But I believe, in view of the element of doubt that still remains, we should require a realistic escape hatch, so that, if we guessed wrong, someone can administer redress.

That redress can come from three sources. It can come from the executive department; it can come from the legislative department; or it can come from the judiciary. That really is the question that confronts us on the Dole amendment. Where do we put it?

There is a good bit to be said for each case and a good bit to be said against

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each. Of the three propositions, none is perfect. I prefer judicial review, and I shall elaborate on that in a moment.

I gather, from the remarks of the distinguished Senator from Michigan, that he would prefer that the judgment or relief be vested in the Executive department, in the Secretary. I judge, further, that the only fair intendment of the proposal of the junior Senator from Kansas is that it be vested in the legislative department, in the form of a plan similar to that found in the Reorganization Act.

The proposal in the bill offered in concert by the senior Senator from Kentucky and myself provides for review by the judiciary, but on a very limited basis, on the basis that the relief the court can grant is circumscribed to one question only: That the extension beyond 1975 will be granted for 1 year or it will not be granted for 1 year; and that the extension can be granted, if it is to be granted, only on certain specified statutory grounds.

We do not run the risk that the court will insert itself into policymaking determinations in this field, as it must restrict itself to the basis of jurisdiction conferred on it by the statute.

What are the relative merits, really, of the three contentions? I believe the question before the country in 1975, if the automobile industry has not succeeded in producing a clean car according to the statutory standards, will be essentially a question of fact—that is, whether the industry applied good faith efforts and whether it was possible within the then state of the art to produce a clean car.

Questions of fact, historically and traditionally, are best tried, and have

always been best tried, except in certain specific instances, by the judiciary. They are certainly more amenable to being tried in the judiciary than they are by 535 legislators. The procedure for determining these issues is already formalized and imbedded in the judicial precedents of this country, indeed reduced to writing in this statute.

But, not least of all, it occurs to me that if in 1975 the automobile industry, for whatever reason, has not produced a clean car, the amount and type of interest in the judgment of the Secretary, the Congress, and the courts will be extraordinary indeed, because the net effect of this statute, Mr. President—and I think it is important that we realize it—is to simply say, "Produce a clean car by 1975 or stop producing internal combustion cars."

If there is to be a 1-year reprieve, I have an idea that there will be a substantial interest in the proceedings by which that is determined. I believe the court, in the sanctity of its judicial undertaking, in the calm, cool deliberations of its factfinding function, in its detachment from the immediate pressures——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COOPER. Mr. President, I yield 2 minutes to the Senator from Tennessee.

Mr. BAKER. Is best suited to undertake this task, rather than 535 legislators, 435 of them standing for election in 12 months and one-third of the Senate standing for election in 1976, to say nothing of the pressure, the heat, and the confrontation of a political campaign for President in 1976. The Congress is probably the least likely place to have clear, calm determination of that fact issue.

Congress is perfectly within its right to reserve to itself the determination of this issue of fact, but I believe we are doing ourselves a disservice if we do not vest it in the judiciary.

That leaves only the other alternative, then, of the executive department. I would have no great quarrel with letting the Secretary decide whether or not the automobile industry had used good faith and had made its very best effort to produce a clean car by 1975, but this may be the biggest industrial judgment that has been made in the United States in this century. It may have the biggest impact on the economy that any of us have participated in in recent years. It is going to be of extraordinary importance and an extraordinarily emotional situation if the industry has not produced a clean car, according to this formula, by 1975.

I can guarantee my colleagues that, whatever judgment we make, whichever of the three departments we elect to determine whether or not the industry would have a 1-year reprieve in the event it had not produced a clean car, will not be perfect. I think we must realize that the best we can do is the best we can do and that there will be a great deal of criticism of whatever judgment we make, but I believe the judiciary is the one best equipped, best suited, and best able to make this determination.

Mr. MUSKIE. Mr. President, I wonder if the Senator from Kansas wanted to ask for the yeas and nays on his amendment.

Mr. DOLE. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. SPONG. Mr. President, will the Senator from Kentucky yield me 2 minutes?

Mr. COOPER. Mr. President, I yield the Senator from Virginia 3 minutes, and more if he needs it.

Mr. SPONG. I thank the Senator.

Mr. President, the question on the Dole amendment is the determination

by the Senate of the best method by which the Secretary's decision concerning the capability and technology available for the automobile industry to meet what this bill requires of it by January 1, 1975, can best be judged to be correct.

I want to concur in the statements already made that, as between Congress deciding within a 60-day period whether the Secretary has been correct in his judgment, and a court of law deciding it, having the right of subpena, the right of discovery, the right of calling expert witnesses, and making a judgment, we would be serving the public interest if we placed this issue where it would be subject to judicial review rather than our own.

For that reason, I oppose the Dole amendment and support the amendment offered in the committee by Senators COOPER and BAKER.

Mr. GRIFFIN, Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. GRIFFIN. I associate myself with the Senator's line of reasoning. I personally would prefer an administrative decision. I think it would be better placed there. But I can see there would be very little chance that this body would accept that change.

But as to a choice between a judicial decision and what I regret to say, unfortunately, might be a political decision in Congress, I think the industry and the public would be better served by a judicial decision.

Mr. SPONG. I thank the Senator from Michigan.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I yield myself 2 minutes.

It is important that we review how these different procedures might apply. As the Senator from Kentucky pointed out earlier, the Dole amendment and the language now in the bill are very much alike in the initial stages. The first possible time that a petition could be filed with the Secretary would be September 1, 1972, if we take the model year, or January 1, 1973, if we go on a calendar date basis. Then we allow the Secretary 6 months to make a recommendation.

If we take the first date, the petition being filed on September 1, 1972, then he would have until March 1, 1973. If we take a calendar date, he would have until July 1, 1973. Then after that finding, if we use the judicial review approach, he would have 30 days in which to file a petition with the U.S. Court of Appeals in the District of Columbia. That would either be April of 1973 or August of 1973. I have been trying to determine just how long it might take for this case to be heard by the court of appeals. I have been informed that it might be as short as 3 or 4 months, but possibly it might extend to 6 months, 8 months, or even a year.

Then, of course, there is the right of appeal to the U.S. Supreme Court. The point I wish to make is that it would probably be a moot question, because it would never be determined by the Court by the time the 1975 model year was on the market.

I might ask the Senator from Kentucky a question at this point: In the event the Court has not made a final determination, and January 1, 1975, was rolling around, or the 1975 model was available, and the matter was still in court, what would be the effect of the judicial review section? Would the standards apply, or would they be held in abeyance while the Court made the determination?

Mr. COOPER. Mr. President, I discussed this in the short statement I made.

I point out, first, that even though application is made, there is no relaxation or postponement of the application of emission requirements. Automobile companies must continue

to come into conformity, and if they have not reached conformity on the effective date, the burden would fall on them.

The Senator asks me what would hap-

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pen if the court had not passed upon it at that time. We discussed this in the committee. The Senator from Virginia and I discussed it, and the Senator from Maine asked questions about it.

It was our judgment, first, that Congress can limit the courts in respect to the remedy they can grant and this the committee has done by limiting jurisdiction to a 1-year extension. Our judgment was that if it took more than 1 year to reach a decision, the case was moot, and the automobile companies would have to come into conformity or seek a remedy from Congress. On the other hand, I want to be straightforward and honest about it: I cannot determine nor direct how or when a court might determine the question of due process, and I do not believe anyone can do that. The provision does provide for an expedited procedure and I expect the court would make every effort to handle such a matter with dispatch.

I must say again, however, that I do not believe that the Senator's amendment provides due process. Although there is authority to the contrary, I still believe that even if no review is provided in this measure, an interested person could go into court and say, "I have been denied constitutional due process," and my judgment is that the court would grant some review. Thus the Senator's provision may still give rise to judicial review, without, however, the directions contained in the committee bill.

The committee bill places very concrete limits upon judicial review and I think it is as precise in its limits as any method of review can be.

Mr. DOLE. I say with all due respect to the distinguished Senator from Kentucky that this does appear to be a weakness in the judicial review section. There has been much stress on the point that time is of the essence, and we must make a final determination at the earliest possible time, unless we want to penalize unfairly a great industry in America.

Under the so-called Dole amendment, we have the same effective date, but then, after the Secretary makes his decision, he has 6 months. He would make that decision either on March 1, 1973, or July 1, 1973, again depending on whether he used the model year to determine the date or the calendar year. Then the Congress would have to act within 60 days. So we would be certain that the decision made by one House of Congress or the decision made by the Secretary would be final not later than September 1, 1973, and perhaps as early as May 1, 1973.

I say again that perhaps the underlying weakness of judicial review, in this particular instance, is the fact that there might not be a decision by January 1, 1975, or by the time the 1975 model was on the market and we would then do a disservice to an important industry.

But if we make the judgment in the first instance, as we are about to do today, despite political pressures, political pressures which are surely greater now than they will be in 1975, because hopefully there will be progress and less pollution then, I am convinced that the political pressures will be something we can withstand.

If Congress is willing to impose stringent standards today, then Congress should be willing to face up to that judgment 2 years from now. If we were wrong, the extension should be granted; and if we were right, the extension should not be granted. Of

course, if we are totally wrong or far off base, then perhaps the entire law would need to be revised. But it occurs to me that if we are willing, in September of 1970, to state that 5 years from now we are going to meet certain standards, then the same body, the same Congress, should say 2 years hence that we were right or we were wrong. We should make the final judgment; we should not pass it off onto some court because of imagined political pressures in Congress.

Mr. President, I reserve the remainder of my time.

Mr. GURNEY. Mr. President, I ask unanimous consent that my amendment to the pending Dole amendment be considered at this time.

The PRESIDING OFFICER. Is there objection?

Mr. MUSKIE. Mr. President, reserving the right to object, would the effect of the unanimous-consent request, if agreed to, be to terminate the time otherwise still available on the Dole amendment?

The PRESIDING OFFICER. No. It would allow the Gurney amendment to be called up at this time.

Mr. MUSKIE. Would the effect be to add the time on the Gurney amendment to the time still remaining on the Dole amendment?

The PRESIDING OFFICER. It would add 15 minutes to a side.

Mr. MUSKIE. I have no objection.

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. RANDOLPH. Mr. President, I would like the Chair to clarify one thing. He may already have done that, but——

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, reserving the right to object——

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield the Senator 1 minute.

Mr. MUSKIE. Mr. President, I yield the Senator from West Virginia a minute on the bill, or whatever time the Senator may require.

Mr. RANDOLPH. I would simply like a clarification from the Presiding Officer that perhaps has been given, but I could not hear it.

I first inquire, if this is not permitted as requested by the junior Senator from Florida, what time now remains on the Dole amendment?

The PRESIDING OFFICER. One minute to the Senator from Kansas, 8 minutes to the Senator from Kentucky.

Mr. DOLE. Mr. President, reserving the right to object, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. In either event, the first vote would come upon the Gurney amendment; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. BOGGS. I yield the Senator 1 minute on the bill.

Mr. BAKER. Will the Chair inform the Senator from Tennessee if he is correct in his understanding that the Gurney amendment would be subject to the limitation previously agreed upon?

The PRESIDING OFFICER. There would be a limitation of one-half hour, 15 minutes to the side.

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Florida? The Chair hears none, and it is so ordered. The amendment will be stated.

AMENDMENT NO. 928

The legislative clerk read the amendment, as follows:

On page 1, beginning on line 1, strike "Within twenty-four months but no later than twelve months".

On page 1, line 2, capitalize the word "before".

On page 1, line 4, after the word "application" insert the following: "in a timely manner to be determined by the Secretary".

Mr. GURNEY. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. GURNEY. Mr. President, this amendment would change the time provisions in the Dole amendment in which application for relief may be sought under the Dole amendment. We have been talking in the last 15 or 20 minutes, on the argument of both the Dole amendment and the provision now in the bill about the judicial review, about the importance of time. Time is important in this provision, because there has to be a very considerable lead time for the automobile manufacturers to jell their model, the elements that go into the model as well as the antipollution device, and order tools to manufacture the antipollution device; and I am informed that it means a very considerable body change. So there will have to be many tools besides the ones needed to manufacture the antipollution device. All this requires time.

This is a tough bill. We all admit that it is so. That is the reason why we have in the bill at this time a review method, so that relief can be obtained from this bill for at least 1 year, under the judicial review measure. That is why the Senator from Kansas (Mr. DOLE) has offered his differing amendment for relief, also, because no one is sure in the automobile industry, in the Public Works Committee which heard this matter, or in the Secretary of Health, Education, and Welfare's shop whether the automobile industry can meet this January 1, 1975, deadline. Everyone says that right now it is not within the state of the art, although we will hope that it can be met by January 1, 1975. The point is that if it cannot, then we must have relief for this great industry in America

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that employs so many people and means so much to the prosperity of the country.

I have heard all kinds of differing people on what kind of leadtime is required by the automobile industry. Some say 3 years; some say three and a half years. The shortest I have heard is 2 years.

The Dole amendment provides that the automobile industry cannot make application to the Secretary until 24 months prior to the effective date of January 1, 1975. Then we add 6 months that the Secretary has within which to make his determination, and add 2 months more within which Congress has to either agree with the Secretary or not agree with the Secretary, and we have shortened the 24 months to 8 months less. I have not heard any statement from anybody that says that is enough leadtime within which the automobile industry can tool up and produce the 1975 models requiring this antipollution device.

All my amendment does is to take out this 24-month period and the 12-month period, and it puts in there this language: "in a timely manner to be determined by the Secretary."

In other words, the Secretary, himself may determine what is timely on the part of the automobile industry within which to make application for relief under this bill. No one is better prepared to make that determination than the Secretary. He has the experts within his shop who have been

dealing with the matter of air pollution for a matter of years. As a matter of fact, I am informed that they continually check closely with the automobile industry in Detroit, finding out what is going on within the experimental stages now, within the research and development on this antipollution device; and the Secretary, indeed, would know when it was timely for the automobile industry to make an application.

I know that arguments will be made that the automobile industry is going to appear before the Secretary within a day or two after this bill is passed if we put in "in a timely manner." The other argument, on the other end of the pole, is that they will wait until the last minute. I do not believe that they have that bad faith, but I think something else will compel them to do otherwise. Obviously, the automobile industry is not going to go to the Secretary within a day or two or a week or two or a month or two after this bill becomes law, because they want the best case they can get, too.

The best case they can get is to wait as long as they can, showing the results of their research and development. On the other end of the pole, they are not going to wait until the last minute, either, because they cannot do that. They have to jell their model; they have to order their tools; they have to be in a condition to get in their 1975 models.

So it seems to me that the only sensible way to handle this matter is to leave it up to the Secretary to determine, when the application comes to him, and in a timely fashion. Then I think we will have a sensible approach to this matter and a relief method that will work.

I reserve the remainder of my time.

Mr. MUSKIE. Mr. President, I will not take too much time, but I should like to make some points that I think are relevant to the amendment.

First of all, the provision in the bill was written after consideration by the committee, without dissent in committee. The purpose of the provision is this: We wanted the provision for appeal to be made available late enough in the 5-year time frame so that the industry would make, and be forced to make, a good faith effort toward achieving the objectives of the bill before resorting to the courts. At the same time, we wanted to provide that there would be sufficient time to resolve the appeal and to get a decision so that the industry could then respond to that decision in its production schedules.

So the committee carefully, and after considerable deliberation, agreed on the 12- to 24-month formula. In other words, the appeal must be initiated and completed within calendar year 1973.

The question that the Senator from Florida raises and is concerned about is whether there would then be time to put production models into the process. Let me cite the record.

The California standards which were the first standards applying to automobiles, were adopted by California in May of 1964. The industry managed to incorporate them in the 1966 model cars, which were in the showrooms in the fall of 1965. In other words, a little more than a year after California imposed the standards, California automobiles were being manufactured in accordance with those standards.

With respect to Congress, Congress enacted the current law in the fall of 1965, applicable to the 1968 model cars, which were available in the fall of 1967. So that 2 years after the authority was given to the Secretary, and less than 2 years after the Secretary actually imposed the standards, the industry was producing cars that conformed to the standards.

Here is another piece of testimony

that is revealing. It was by Vice President Ackerman, of Chrysler Corp., in 1959, long before pollution control standards were involved. At that time, without the pressure of deadlines, he said this:

> Once these hurdles are over—

He was talking about the hardware being available—

> Once these hurdles are over, we have said that we believe this thing could be available within a year.

So there is time to respond to the results of the review process, whether it is the review process incorporated in the bill, the so-called Cooper amendment, or the review process proposed by the Senator from Kansas (Mr. DOLE).

For that reason, Mr. President, I oppose the amendment and urge the Senate to vote against it.

I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Florida yield back the remainder of his time?

Mr. GRIFFIN. Mr. President, would the Senator from Florida yield to me, briefly?

Mr. GURNEY. I yield 5 minutes to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I rise to indicate my strong support for the amendment offered by the Senator from Florida. He points out that the lead time required by the industry is all-important to the applicability of this particular legislative measure.

Yesterday, the distinguished Senator from Maine, in discussing this measure, referred to testimony back in 1967 by Mr. Mann of the automobile association. He cited Mr. Mann's testimony as evidence that only 2 years was actually required to put such a change into effect, as I recall the statement.

Mr. MUSKIE. If the Senator will yield there, simply to clarify my use of the testimony, it was to indicate that by the testimony of the industry itself, not more than 2 years was necessary. There is evidence, which I have already placed in the RECORD today, indicating less than that time is sufficient.

Mr. GRIFFIN. I want to read from Mr. Mann's testimony. It appears on page 402 of the hearings of 1967. He says:

> Normally what I have referred to in the preceding paragraph takes approximately two years, in addition to the time needed for research, design, and development stages.

On yesterday, in a colloquy with the Senator from Maine, I said that it could take as much as 43 months from the drawing board stage until automobiles actually come off the assembly line—that much time to incorporate such technology—if and when it is available. At the present time, it is not available.

So, I wish to emphasize that the 2 years referred to yesterday is in addition to such time as would be needed for research, design, and development.

The Senator from Florida, I think, moves in the right direction by providing some measure of flexibility. He makes the case, very wisely, that there would be no reason or motive for the industry to rush in without a case, so that they would not go in prematurely in any event. But they would like the opportunity to go in as early as the case is available to make sure that this legislation will not absolutely close the automobile industry down—and that could happen if we put them in a completely unrealistic straitjacket.

Accordingly, I hope very much that the amendment of the Senator from Florida will be agreed to.

Mr. GURNEY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr.

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PACKWOOD). Seven minutes remain to the Senator from Florida.

Mr. GURNEY. I shall not take all 7 minutes but I would like to reply to the Senator from Maine in his arguments against the amendment.

I could detect only two arguments against it. One has to do with the fact that California standards as applied to aid emissions and requiring pollution devices in California a few years ago did not need the amount of time that I am talking about. I do not see that this is an analogous situation at all. What was done in California a few years ago is

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nothing so drastic as what we are proposing to do here. We go way beyond the California standards.

What I am saying is that perhaps California standards could be met in the 2-year leadtime, but now we have a completely changed situation.

Mr. MUSKIE. If the Senator from Florida would yield on that point, the attitude of the industry prior to the time it was required to conform to the California standards was the same as it is in this case. They said it could not be done. But, it was done.

Mr. GURNEY. Then I might further treat with the other argument made by the Senator from Maine, which seems to me to be even more untenable. I, too, read the testimony he read to the Senate a short time ago, the testimony by the vice president of General Motors Corp. in 1959. That was 11 years ago. We have proceeded 11 years beyond 1959 in this pollution business.

We have here now a bill that is as different from the situation he was talking about in 1959 as the North Pole is from the South Pole. They could not be further apart. Thus, I do not think the arguments made by the Senator from Maine are viable in either case.

Finally, in closing and wrapping up the arguments on behalf of my amendment, I do not disagree with the Dole amendment. I am supporting it. It is a good one. But I also think, as the Senator from Michigan (Mr. GRIFFIN) just pointed out, that if we put in the arbitrary dates of 24 months before this that the automobile industry must apply, it cannot apply any later than 12 months before that date, we do, indeed, put them in a straitjacket.

The facts and circumstances are, when we all admit, in the committee, in the industry, and the people in Government who are experts in this business, that we do not even know whether they can be met, the industry itself says it does not have the technology to do it, although it hopes to be able to meet it. Under these facts and circumstances, we look ridiculous in the Senate not to give the Secretary of Health, Education, and Welfare a little leeway as to when he will receive this application for relief.

All I say is that my amendment makes more viable, more sensible, and more reasonable when this application may be presented to the Secretary of Health, Education, and Welfare.

Mr. President, I yield back the remainder of my time.

Mr. MUSKIE. Mr. President, I should like to read one quotation to the Senate from a letter by President Cole of General Motors, dated January 31, 1969, which reads:

> It is apparent that it is technically feasible to achieve very low pollution levels with internal combustion engines—levels at least as low as known ambient air quality needs. More importantly, of the various approaches to controlling vehicular pollution, the gasoline engine seems to offer a better cost-benefit relationship than the unconventional powerplants in the lower right-hand corner of these charts.

May I also read from the hearings of 1967. This is testimony by an industry spokesman:

Since the late 1940's, General Motors engineers and scientists have been doing basic research on emissions and developing the results of these into practical hardware. Between now and 1980, we sincerely believe that current research and engineering development programs on our current gasoline engines will result in continued progress toward solution of this important problem.

Later in the testimony, there was the same pessimism about meeting deadlines that the Senator has expressed.

Since the late 1940's, a quarter of a century ago, the industry has been occupied with this problem by its own statements. It has been developing technology. Every time it is pressed to apply the technology, it pleads for time. It says it is not possible. It said this to California in 1964. It said this to us in the hearings in 1964 and in 1965. It says it again now.

What we need in this 5-year period is a period not only for production line work but also time for development of the concepts which have been on the drawing boards all these years. Because that is time the committee does not want to reduce, that is why we fix a time when the appeal time starts. It is as simple as that.

Mr. GURNEY. Let me point out that the Senator and I do not disagree on the applicable time——

The PRESIDING OFFICER. The Chair would advise the Senator from Florida that he yielded back his time.

Mr. MUSKIE. I yield 1 minute to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 1 minute.

Mr. GURNEY. I thank the Senator from Maine.

We do not disagree on that at all. My amendment, of course, in no way weakens the applicable standard date, which is January 1, 1975.

It simply revises the method and the time by which the automobile industry could make application to the Secretary, which I think is reasonable.

Mr. MUSKIE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the amendment of the Senator from Florida to the amendment of the Senator from Kansas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The result was announced—years 22, nays 57, as follows:

* * * * *

So Mr. GURNEY's amendment to Mr. DOLE's amendment (No. 958) was rejected.

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Mr. RANDOLPH. Mr. President, by a vote of more than 2 to 1 we have defeated the Gurney amendment and we now are approaching the vote on the

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Dole amendment. I think the core of the problem as presented in the Committee on Public Works, and again as we have considered the matter in the Senate this afternoon, is, in effect, whether we are for or against judicial review which is embodied in the amendment offered by the Senator from Kentucky and the Senator from Tennessee in the Committee on Public Works.

The amendment of the Senator from Kansas was defeated in committee. The chairman of the Subcommittee on Air and Water Pollution has indicated that the vote was close. The vote was 8 to 6.

I think it is important, however, to realize that the vote in the Committee on Public Works on the Cooper-Baker amendment was 10 to 3 for that amendment.

Mr. President, I supported the amendment of Senators COOPER and BAKER in the committee. I did so because I thought it was important to have judicial review. I feel very

strongly today, as I did then, that the bill, before the Senate, should include the Cooper-Baker language.

The basic reasons supporting such review have certainly been amply set forth during the consideration of this measure by other speakers, including Senators COOPER, BAKER, and SPONG.

Mr. President, in my opinion, judicial review is superior to the pending proposal of the junior Senator from Kansas (Mr. DOLE). It is superior because judges, I feel, will be less subject to the pressures and cross currents of opinions expressed outside the courtroom.

Furthermore, it is axiomatic that the Congress can act on the law, can amend it, at any time it believes circumstances necessitate such action.

If we abolish court review by defeating the Cooper-Baker amendment and approve the Dole amendment, then our only recourse would be to the Congress. If we sustain the principle of court review in the Cooper-Baker amendment, Congress can still act whenever conditions seem to require it.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MUSKIE. Mr. President, is there any time left?

The PRESIDING OFFICER. The Senator from Kansas has 1 minute, the Senator from Kentucky has 3 minutes.

Mr. DOLE. Mr. President, may I have 30 seconds?

Mr. MUSKIE. Mr. President, since there are Senators present on the floor who were not here earlier. I would simply like to say that I supported the Dole amendment in committee. I support it here, for the following reasons: First, if this bill is enacted into law, it is a congressional decision which ought to be modified only by Congress. Second, the Secretary would continue to have the staff and know-how necessary to do the job better than the courts. His recommendation would come to Congress. Congress would have to act affirmatively to affirm his recommendation.

Mr. DOLE. Mr. President, I yield myself 30 seconds to say the only difference between the Baker-Cooper amendment and my amendment is as to whether the court or Congress shall determine the matter. If Congress imposes the standards, we should make the judgment 2 years hence.

Mr. COOPER. Mr. President, I yield myself 1 minute to clarify a statement previously made. The Secretary, in each case, will first review all the evidence, with all its technical staff. This would be the record available in either case.

It should be noted also that the Baker-Cooper amendment was adopted in committee by a 10-to-3 vote. I would like to repeat that this provision will give the due process which I believe Congress wants to give to all its citizens.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. COOPER. I yield back my time.

Mr. DOLE. I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Kansas. On this question the yeas and nays have been ordered, and the clerk will call the roll.

* * * * *

The result was announced—yeas 32, nays 43, as follows:

* * * * *

So Mr. DOLE'S amendment was rejected.

Mr. COOPER. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. RANDOLPH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 927

Mr. MANSFIELD. Mr. President, in behalf of the Senator from Washington (Mr. MAGNUSON), I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 927) is as follows:

AMENDMENT No. 927

On page 79, beginning with line 6, strike out all through line 16 and insert in lieu thereof the following:

SEC. 213. (a) For the purpose of this section—

(1) "Board" means the Low-Emission Vehicle Certification Board;

(2) "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia;

(3) "motor vehicle" means any vehicle, self-propelled by mechanical or electrical power, designed for use in the United States on the highways except any vehicle designed or used for military field training, combat, or tactical purposes;

(4) "low-emission vehicle" means any motor vehicle which produces significantly

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less pollution than the class or model of vehicle for which the Board may certify it as a suitable substitute; and

(5) "retail price" means (a) the maximum statutory price applicable to any class or model of motor vehicle; or (b) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

(b) (1) There is established a Low-Emission Vehicle Certification Board to be composed of the Secretary or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

(3) (A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS-18 by section 5332 of title 5, United States Code.

(B) The Chairman may fix the time and place of such meetings as may be required.

(C) The Board is granted all other powers necessary for meeting its responsibilities under this section.

(c) The Secretary shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

(d) (1) The Board shall certify any class or model of motor vehicles—

(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

(B) which is a low-emission vehicle as determined by the Secretary; and

(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

(i) the safety of the vehicle;

(ii) its performance characteristics;

(iii) its reliability potential;

(iv) its serviceability;

(v) its fuel availability;

(vi) its noise level; and

(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

(2) Certification under this section shall be effective for a period of one year from the date of issuance.

(3) (A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in

accordance with rules established by the Board and published in the Federal Register.

(B) The Board shall publish a notice of each application received in the Federal Register.

(C) The Secretary and the Board shall make determinations for the purpose of this section in accordance with procedures established by the Secretary and the Board, respectively, and published in the Federal Register.

(D) The Secretary and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in the certification application rules established under this section.

(E) The Secretary and the Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

(F) Within ninety days after the receipt of a properly filed certification application, the Secretary shall determine whether such class or model of vehicle is a low-emission vehicle, and within one hundred and eighty days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any such determination or decision, the Secretary and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

(e) (1) Certified low-emission vehicles shall be acquired by purchase by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

(2) In order to encourage innovative development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an innovative, inherently low-polluting propulsion system.

(3) Data relied upon by the Board and the Secretary in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

(f) The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

(g) For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

(h) The Secretary shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Secretary shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

(i) There is authorized to be appropriated annually not to exceed $50,000,000 for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section.

(j) The Board shall promulgate the procedures required to implement this section within ninety days after the effective date of this section.

The PRESIDING OFFICER. The Senate will be in order. Who yields time?

Mr. MUSKIE. Mr. President, I yield myself 5 minutes.

This amendment has been offered by the distinguished Senator from Montana in behalf of the Senator from Washington (Mr. MAGNUSON). It is an amendment that I am prepared to take, but I should like to read this description of it which was prepared by the Senator from Washington (Mr. MAGNUSON).

As most of the Senate is aware, the

Senator from Washington necessarily could not be present during the Senate's consideration of this bill because of an illness in his family. His statement is as follows:

STATEMENT BY SENATOR MAGNUSON

This amendment is designed to create a comprehensive Federal low-emission vehicle procurement program which would stimulate the development, production, and distribution of motor vehicles which emit few or no pollutants. The procurement program would stimulate low-emission vehicle production and distribution by creating immediately a guaranteed market which would pay certain fixed premiums for low-polluting vehicles and provide controlled conditions for field testing new concepts in automotive propulsion.

This amendment is substantially identical to my bill, S. 3072, which this body passed without a dissenting vote on March 26, 1970, but which the House has not acted upon. It would establish a Low-Emission Vehicle Certification Board composed of the Secretary of Transportation, Secretary of Health, Education, and Welfare, the Chairman of the Council on Environmental Quality, the Director of the National Highway Safety Bureau, the Administrator of General Services, and two Presidential designees. This Board would receive applications from developers of low-emission vehicles and determine if those vehicles were suitable substitutes for existing vehicles in use by agencies of the Federal Government.

To obtain certification for a vehicle, a developer would make application to the Certification Board in a manner prescribed by the Board. Upon receipt of this application the Board would ask the Secretary of Health, Education, and Welfare to determine whether the vehicle embodies a significant advance in pollution emission control technology. If the Secretary so finds, then the Board would determine whether or not the vehicle was suitable for use as a substitute for any class or model of vehicles then in use by the Federal agencies. In making such determinations the Board would consider such factors as the safety of the vehicle, its performance characteristics, its reliability, potential, its serviceability, its noise level, and its maintenance characteristics.

Any vehicle determined by the Secretary of Health, Education, and Welfare to be a low-emission vehicle and certified by the Board to be a suitable substitute is then eligible for purchase at a premium of 150 percent of the retail procurement cost of the least expensive class or model of comparable vehicles. At its discretion the Board may in-

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crease that premium to 200 percent if the vehicle being purchased embodies an innovative propulsion system which is "inherently low-polluting"—one not depending upon some complicated add-on device to make it smogless.

To the extent that such low-emission vehicles are available, at prices within the premium ceiling, the Administrator of General Services is required to purchase them.

I urge my colleagues to again endorse this Federal procurement proposal. In the first place, this amendment will enable the automobile industry to begin at once to test new propulsion systems under controlled conditions to insure their satisfactory performance in the general consumer market by 1975 or 1976. Secondly, the premium payments will help defer some of the prototype development costs. Thirdly, the bill will make feasible independent innovative development of low-emission vehicles so that all paths to low-emission vehicle development can be explored and the 1975 legislative mandates can be met through the best technologies presently available to this Nation.

There is a final need for this legislation. The Federal Government, particularly as it places greater and greater demands on the private sector not to pollute, has a strong obligation not to disrupt the environment when conducting its own activities. Therefore, the reduction in pollution from governmental vehicles, even apart from the considerations previously mentioned, establish a need for this amendment—now.

The legislation represented by this amendment has already been enacted by the Senate once this year, Mr. President. I was privileged to be a cosponsor of it with the distinguished Senator from Washington. We held joint hearings—the Committee on Commerce and the Committee on Public Works. So I recommend that the Senate adopt the amendment.

Mr. BOGGS. I yield myself 1 minute.

Mr. President, in view of the statement offered by the manager of the bill, the Senator from Maine, and the fact that the Senate has previously acted on this matter, I have no objection to accepting the amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. GRIFFIN. It is the identical bill that was passed?

Mr. MUSKIE. Yes, it is. There are a few technical amendments, I might say.

Mr. President, I yield back the remainder of my time.

Mr. BOGGS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BOGGS. Mr. President, the distinguished senior Senator from California (Mr. MURPHY) who, up until this Congress, was a member of the Senate Public Works Subcommittee on Air and Water Pollution, and who has always been a strong advocate of legislation to fight pollution, is necessarily absent today. The Senator cosponsored the bill which is before us today, and he has prepared a statement in support of the measure.

Mr. President, I ask unanimous consent to have Senator MURPHY'S statement printed in the RECORD.

There being no objection, Senator MURPHY'S statement was ordered to be printed in the RECORD, as follows:

SENATOR MURPHY STRONGLY SUPPORTS BILL DESIGNED TO ACHIEVE CLEAN AIR BY 1975

Mr. President, as a cosponsor, I strongly support S. 4358. This measure is tough, timely and desperately needed.

I want to congratulate Senator Muskie and the ranking Republican member, Senator Boggs, and the members of the Subcommittee and full Committee of the Public Works Committee for bringing this effective measure to the Senate Floor. Up until this Congress, I was a member of the Public Works Subcommittee on Air and Water Pollution. In this capacity I helped to shape and strongly supported all the air pollution legislation enacted since 1965. My interest in the problem since leaving the Committee has continued undiminished. I know of the careful and thorough manner with which the Committee considers legislation; I know of the cooperative and bipartisan spirit that operates in the Committee for the benefit of the nation. This has produced again a unanimous recommendation to the Senate on a bill for the benefit of the entire nation.

There was a time when smog was considered a unique type of scientific curiosity resulting from the unusual photochemical reactions which occurred in Los Angeles. I have had the pleasure of crossing this vast and great country many times in recent years. I have seen the pollution problem grow until, today, it is nationwide. Dr. John R. Goldsmith of the Cal. Department of Public Health has declared "there is no more clean air in the United States . . ."

In California, where the concern over the pollution problem is probably the greatest in the country, we have experienced a similar spread of pollution.

In San Gabriel and San Fernando Valleys, which neighbor Los Angeles, smog is frequently heavier than in Los Angeles itself.

Sacramento Valley which already has a smog problem, may face pollution greater than Los Angeles within the next decade or two according to a University of California agriculture engineer.

Fresno citizens 25 years ago were able to see the Sierra Nevada Mountains in the distance. Today these mountains can only be seen in the morning.

Smog in the Los Angeles basin has resulted in a slow decline of citrus groves south of the city and trees have been damaged in the San Bernardino National Forest 50 miles away.

No longer do we hear isolated voices of concern in California; the citizens of California are almost one voice crying out in rising crescendo against the attack on the state's beauty and against the impairment of the quality of life.

California has pioneered the nation's battle against pollution. The Los Angeles County Air Pollution District probably has the toughest air pollution laws in the country against pollution from stationary sources. California has also been the bellwether in the nation's battle against pollution from the automobile. I might say that I am pleased that the "Murphy Amendment" which was added to the Air Quality Act of 1967, after a difficult fight, is preserved and is found in Section 210(b) of this measure. This amendment grants to California the right to set automobile emission standards higher than the nation. California has taken advantage of the amendment and has enacted legislation at the state level giving California the strongest anti-pollution laws with respect to automobile emissions in the country. Notwithstanding, these strict controls, the automobile remains the principal polluter in California. This is a particular concern for California which already has more cars per capita than any other state.

In addition, California is adding to its present number at a rate faster than any other state. If present trends continue, it has been projected that 42 million Californians will be

operating 23 million vehicles by the year 2000. These 23 million vehicles will consume 25 billion gallons of gas or three times the present consumption. We are running as fast as we can, but our efforts have only given us a "dangerous status quo."

Air pollution has an adverse affect on both man and his environment. Over 200 million tons of contaminates are emptied annually into America's skies. Pollution soils our clothes and our homes. It causes economic dangers to our agricultural products. As the number one agriculture state in the nation, this obviously is a major concern to California. A recently concluded eight-year study by the Air Resources Center at the University of California at Riverside showed smog was causing economic damage to citrus crops. The study found air pollution cutting the yield per tree by as much as half and reducing the cost value by $33 million. This same study found the greatest economic loss from smog to ornamental plants and shrubs of homeowners. This damage was estimated to be a staggering $125 to $144 million each year. Air pollution also limits visibility. The beauty of California is blurred. Air transportation is made more hazardous. For example, as a result of Los Angeles smog, visibility frequently is lower than three miles. The July, 1970, air pollution alert on the East Coast nearly obscured visibility in some areas.

While this damage to our eyes, our sensitivities, and our pocketbooks are important, the most important effect of air pollution is the danger it poses to the nation's health. There had been several disaster warnings about the air pollution crisis. These occurred in 1930 in Mouse Valley of Belgium, in Donora, Pennsylvania in 1948, in London in 1952 and again in 1962, and in New York in 1953, 1963 and 1966. The news reports on Japanese efforts to control air pollution, particularly in Tokyo, and the reports considered at international conferences in recent years on the subject of pollution show pollution to be a worldwide problem. According to a *Washington Post* article of July 27, 1970, the Japanese characterize their air pollution problem as exposing citizens to the greatest danger of their lives. There probably have been other crises in smaller, less conspicuous locations, where the conditions were not recognized for what they were or where the situation was not reported. The major air pollution disasters were important in that they presented dramatic evidence of the deleterious effects of air pollution.

Most health workers in the field of respiratory diseases now agree that air pollution is capable of producing serious health effects. Rene Dubos pointed out in his book, "Man, Medicine and Environment": "Chronic respiratory disease is now the leading cause of disability among adults in all the industrialized parts of northern Europe and is becoming increasingly prevalent in the United States. . . . Like chronic bronchitis, cancer, and many other types of pathological manifestations, the multifarious effects of environmental pollutants may not be detected until several decades after the initial exposure."

In *Hospital Practice*, May, 1970, John Goldsmith discusses community surveys in Los Angeles and Pasadena which show that air pollution has a significant effect in aggravating the condition of asthmatics. Other epidemiological studies report that relatively little air pollution aggravates chronic bronchitis. Controlled clinical studies in Los Angeles showed that patients with bronchitis or moderately advanced emphysema are seriously affected by Los Angeles type

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smog. Goldsmith also states that the available evidence suggests that air pollution may actually be a causative agent in emphysema. Emphysema is now the fastest growing cause of death in the United States, doubling every five years since World War II.

Dr. John W. Jutila, a microbiologist at the Montana State University, is reported as saying that "Environmental microinsults accumulate to become life threatening to more and more individuals. Acceleration of the aging process and the onset of cancer are among the threats posed by a fouled environment." In an extensive review by Stephen Ayres and Meta Buehler in *Clinical Pharmacology and Therapeutics*, May–June, 1970, the authors summarize their results by saying: "An impressive body of scientific information points to the inescapable conclusion that the levels of pollutant contamination existing today in many American cities are sufficient to produce profound health consequences."

The first annual report of the Council of Environmental Quality states:

"It is well established that air pollution contributes to the incidents of such chronic diseases as emphysema, bronchitis and other respiratory ailments. Polluted air is also linked to higher mortality rates and other causes including cancer, arteriosclerotic heart disease."

The incidents of chronic disease has increased rapidly during the past century. Although it is difficult to determine the cause of chronic diseases, there is enough evidence to make one thing certain—air pollution is not doing any of us any good. So the direct proof of cause and effect relationship between air pollution and health still is and should be the subject of research and discussion in medical research. One is reminded of the controversy which still drags on about cause-effect relationships between smoking and cancer. Disagreements still continue and people are still suffer-

ing ill health. Although the evidence and statistics I have cited are convincing and point out the urgency for new and tough action, I believe the report which was carried in *Today's Health* for this month which included the following quotation even more cogently depicts the need for action:

"Just recently there was an article in the newspaper about grade school children in the area south of Chicago's loop drawing pictures in art classes. In the last three years the sun no longer appears. Before, there was always a bright smiling sun in the sky. No longer. The sun is gone. There is no sun in the pictures now. Children in the schools now accept this, and it's very, very frightening. They accept pollution as a natural part of their environment. 'What ever happened to clean air?' "

I am not willing to accept pollution as a natural part of my environment. I want to help put the "sun" back into the pictures of those grade school children in Chicago. I support this measure and consider the elimination of air pollution as one of the nation's priority problems not only in terms of the obvious and immediate benefits in the form of improved health, but also in terms of indirect benefits which will accrue through improved plant growth and the aesthetic benefits associated with our environment.

I am under no illusions that the cleaning up to America's air will be cheap, but in considering the cost, we must also consider the cost of inaction. Recent articles point both costs out. The *U.S. News and World Report* in its August 17 issue estimated the cost to be over $13 billion over the next five years. However, this same report describes damages from polluted air to be over $65 billion over the same period, and this does not include damage to health.

Lester B. Lave and Eugene P. Seskin pointed out in their recent analysis of the cost effects of air pollution on human health in *Science*, August 21, 1970:

"The evidence is extremely good for some diseases (such as bronchitis and lung cancer) and only suggestive for others (such as cardiovascular diseases and non-respiratory tract cancers). . . . We therefore make the assumption that there would be a 25 to 50 per cent reduction in morbidity and mortality due to bronchitis if air pollution in the major urban areas were abated by about 50 per cent. . . . Approximately 25 per cent of mortality from lung cancer can be saved by a 50 per cent reduction in air pollution. . . . It seems likely that 25 per cent of all morbidity and mortality due to respiratory disease could be saved by a 50 per cent abatement in air pollution levels. . . . There is evidence that over 20 per cent of cardiovascular mortality could be saved if air pollution were reduced by 50 per cent. . . . We have estimates that 15 per cent of the cost of cancer would be saved by a 50 per cent reduction in air pollution. . . . We estimate the total annual cost that would be saved by a 50 per cent reduction in air pollution levels in major urban areas, in terms of decreased morbidity and mortality, to be $2080 million. . . . Psychological and aesthetic effect of air pollution on vegetation, cleanliness, and the deterioration of materials have not been included in these estimates."

Mr. President, the bill before the Senate today builds on the experience and lessons gained under the present air pollution legislation, as well as the mounting and increased awareness of health dangers associated with the pollution problem. As the committee report observes, the problem of air pollution "is more severe, more persuasive, and growing at a more rapid rate than was generally believed."

I would like to discuss some of the features of the bill that is before the Senate today.

(1) The bill provides that by model year 1975 an almost pollution-free automobile must be achieved. 1975 cars must at a minimum reduce pollution by at least ninety per cent from the 1970 standards. While industry has expressed concern that they will not be able to meet these standards, the health and safety of our people requires that they do so and I feel they can. They have risen to similar challenges in the past and have met standards set in California, which initially they felt could not be met. Industry must do so again. Motor vehicles account for 42 per cent of the five major pollutants in the nation. In California, the car is our principal pollution problem. Pollution equipment under the bill would be required to have a fifty-thousand mile warranty. The bill continues the federal preemption of emission standard setting authority for automobiles, which means this states are not permitted to establish their own standards. The "Murphy Amendment," however, added to the 1967 Air Quality Act is preserved intact. Thus, California will continue to be able to establish standards more stringent than the federal standards. The Secretary of Health, Education, and Welfare is also authorized to certify used car control devices.

(2) The bill provides for regulations of fuels and additives.

(3) The bill establishes national ambient air quality standards with specific timetables that must be met. This provision would help to guarantee for all of our citizens cleaner air in the future.

(4) The bill establishes air quality goals.

(5) The bill requires that new industry built in the nation must achieve standards of performance based on the latest available control technology.

(6) The legislation prohibits any emission

of pollution deemed extremely hazardous to health.

(7) The bill authorizes national emission standards for selected pollutants. This provides authority to control pollution not covered by the ambient air standards or by hazardous substance emission controls.

(8) The bill requires federal facilities to clean up. I have felt for some time that the federal government should set an example for the nation. Yet, I have discovered that the federal government often not only is not a model, but actually is a major polluter in some areas. This has to stop. President Nixon has issued an executive order requiring federal facilities to clean up, and these steps are overdue and indeed welcome.

(9) The bill authorizes increased research relating to fuels and vehicles.

(10) The bill authorizes research concerning the health effects of air pollution. Recently the Senate adopted a Smith-Murphy amendment to the Regional Medical bill, calling for a report by the Secretary of Health, Education, and Welfare on the health consequences of pollution. Certainly, we need to know more about this aspect of the problem.

(11) The bill authorizes the Secretary of Health, Education, and Welfare to abate any pollution that presents an imminent and substantial danger to health.

(12) The bill prohibits the federal government from entering contracts with any company under an abatement order or found to have knowingly violated air quality laws.

(13) The bill provides for necessary penalties and controls to make certain that the standards, goals, and intent of the bill is carried out.

(14) The bill establishes an Office of Noise Abatement and Control in the Department of Health, Education and Welfare. Although it is clearly understood that if the Environmental Protection Agency as proposed by the President is established, this noise pollution function would also be transferred.

Earlier I predicted that the 70's would become known as the Decade of Environment. It is not coming any too soon. The President, as his first official act of 1970 signed into law the National Environmental Policy Act of 1970 establishing a three-member White House Council on Environmental Quality. In April, S. 7, the Water Quality Improvement Act, which I cosponsored was enacted. In addition, the President has proposed the creation of a new environmental Protection Agency to coordinate, centralize and accelerate the Nation's pollution fight. This was particularly pleasing to me because I had earlier cosponsored with Senator Scott S. 3388, a bill proposing a similar national agency. I have written the President urging that this agency be located in California. I ask unanimous consent that my press release on this subject be included into my remarks. The Senate on September 1, passed the Environmental Quality Education Act which I supported to establish education programs to encourage and enhance environmental quality. The bill the Senate is considering today will probably rank as the most significant anti-pollution legislation passed by the Congress.

So, Mr. President, the air pollution problem is far more today than a scientific curiosity or a favorite topic for jokes. It is a national disgrace and a menace to the health and welfare of our people. We have already reached that point in our lives when vast national reigons are being affected by enormous contaminated air masses. In 1966 I warned the Senate Subcommittee on Air and Water Pollution that "time is running out." I said: "In my judgment the pollution problem is one of the most serious domestic problems facing our country today. While serious, it is not yet critical. The time is not on our side. It is running out. The delay will not only be costly in terms of dollars, but even more important, will be the possible detriment to human health and the interference with the general well-being of our society."

Mr. President, time now has run out. It is, as President Nixon has declared, "now or never" in our battle against pollution We have reached that point and that time in our history when we must call a halt to the fouling of our environment. We must pro-

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vide our citizens with the quality of air that they rightly demand and deserve. S. 4358 should do the job

The PRESIDING OFFICER. Who yields time? The bill is open to further amendment.

AMENDMENT NO. 930

Mr. COOPER. Mr. President, I call up my amendment No. 930.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. COOPER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and,

without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 63, beginning on line 23, strike out all through line 4 on page 64, and insert in lieu thereof the following: "and shall be so warranted for the lifetime of such vehicle or engine. Fifty thousand miles shall be taken as the basis for the lifetime of a vehicle or engine under this section. As a condition to the obligation of manufacturers to correct defects in design, manufacture, or assembly, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicle or engine".

On page 64, line 12, strike out the words "adjustment, operation".

Mr. COOPER. Mr. President, amendment No. 930 is an amendment proposed by myself and Mr. BAKER and Mr. GURNEY. It arose out of the discussion in the committee, and I shall explain briefly its purpose. I am not going to ask for a vote, but I do think some record of the issue should go into this debate.

The bill provides for a comprehensive warranty by the manufacturer running in favor of any purchaser or subsequent purchaser. The warranty, as I see it, is a warranty that the design and the manufacture of the system and parts in the car which were designed to control pollutants will be effective in favor of any initial purchaser or subsequent purchaser. In addition there is language in the bill which extends the warranty to include "performance". It would seem to me that such warranty would not only guarantee the design and equipment of the car itself but also would guarantee operation by the owner of every car, in effect, perhaps a hundred million car owners in this country.

I must say, however, that in the discussion, the Senator from Maine answered such issues quite persuasively. Inasmuch as I am not an automobile engineer or technician in any way, I can just say that I would not be in a position to rebut those arguments without more information and without more help from other members of the committee who understand engineering.

I think there is a problem with this section, and I have only raised it as an issue but I do not think it should be determined on the floor of the Senate. I do not know whether the problem is as great as I thought it was in the first instance. I bring it up so that in conference we could have a full discussion.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. COOPER. I yield.

Mr. GRIFFIN. I agree with the Senator that there are serious problems in regard to the warranty provisions.

Page 82 of the bill, section 215, provides that warranty provisions shall be effective 90 days after the enactment of this section.

Keep in mind that testing procedures to determine in the field whether or not the extent to which an automobile exhaust is polluting the air have not yet been developed. Keep in mind that it has been admitted on the floor of the Senate over and over again that the technology to make it possible to comply with the standards written into this bill is not in existence today. The hope is that it will be developed. But the warranty goes into effect 90 days after the bill is enacted.

I wonder whether the Senator from Maine could explain how it is that a warranty would go into effect 90 days after enactment in this particular situation.

Mr. MUSKIE. I say to the Senator that since the emission standards were set by the Secretary under the 1965 law, automobiles presumably should have been meeting the standards. The fact is that they have not.

For example, according to testimony of the National Air Pollution Control

Administration—I read from the report:

> The more complete data confirmed that slightly more than one-half of the cars tested failed to meet either the hydrocarbon or the carbon monoxide standard. For one model, more than 80 percent of the cars tested failed one or more tests. Due to the small number of cars, these emission data were not extrapolated to 50,000 miles. However, on the basis of the California data, one would expect that the emissions would tend to increase to some extent with increased mileage accumulation.

So the record is that, although the industry has been able to get certification of the new cars and has sold them—and has sold them under the assurance that they were meeting the standards—the fact is that the cars are not meeting the standards.

So what we are concerned about is not only the tests or the standards that the cars meet while they are in the factory, but also whether or not they continue to meet these standards afterward. We are asking the consumers of America to pay an extra cost, which undoubtedly will be imposed upon these cars, for cleaner cars. The only way we can assure them that they are getting what they are paying for is to impose upon the manufacturer a responsibility and an obligation to build into these cars a durability quality that will permit the cars to meet the performance standards required.

We think that the warranty is essential. The used car population of this country now numbers more than 100 million and is increasing at the rate of a million and a half, discounting those taken off the road. If we are to clean up the used car population of this country, we have to require that new cars meet not only the standards on the production line but also the standards in performance. Unless they do, the whole exercise is useless, so far as I am concerned.

Mr. GRIFFIN. Of course, the goals and objectives are very desirable; I'm sure we are all for them.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. I yield myself time on this bill.

The question is, How realistic and how practical is the proposed legislation? Until now, warranties that have been required, as I understand it, have related to workmanship and material in the automobile as it came off the assembly line. Now, under this bill, we would extend the warranty far beyond that. We would say that not only does the material and workmanship have to meet certain standards when it comes off the assembly line—but also, that, it must still perform in accordance with those standards 50,000 miles later.

Now, the fact is that testing procedures with regard to exhaust emission to establish whether a car, in the field, 10,000 miles later, or 50,000 miles later, is still performing are not available. Is that not correct, I would ask the Senator from Maine?

Mr. MUSKIE. May I say to the Senator that in the bill as presented to the committee, we had a provision that the warranty should not be required until the Secretary was satisfied that the testing procedures were available. It was at the request of the industry that that was changed to 90 days after enactment. I suggested a few moments ago to the Senator that I would be happy to revert to the committee language if that would meet his problem, but he was not interested. We are interested in relating the warranty and its application to the availability of the appropriate testing procedures.

May I say another thing to the Senator, and this is from the testimony of Mr. Williams of the Automobile Manufacturers Association in 1965, where he suggested that na-

tional standards be tested against the criteria one of them being, that (c)—

Control of emissions by establishment of performance standards rather than design standards.

The industry itself emphasized from the beginning, until they were faced with this deadline, that performance should be the test and that it should be geared to the requirements of ambient air. That has been their case since 1967 and before.

Now that we take them up on that, they inject other arguments, that we should not insist upon performance standards, which they cannot guarantee, but that we should go only to the design standards, that the warranty should not be related to performance but to design.

The story is different, now that we take them up on the guidelines they laid down in 1967, which we have been trying to follow.

Mr. GRIFFIN. Mr. President, the goals and objectives of this legislation are fine. But I do not think that the bill before the Senate is very realistic. I agree with the Senator from Kentucky, I do not believe that we can rewrite this

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measure on the Senate floor. I would offer an amendment, but it is almost impossible to rewrite the bill in such manner. I hope this exchange has demonstrated that there are real problems in the bill, and I hope this will not be lost upon the conferees representing the Senate.

Mr. MUSKIE. Mr. President, I ask unanimous consent to have printed in the RECORD the language of the committee report dealing with this question of the warranty.

There being no objection, the excerpt from the report, ordered to be printed in the RECORD, follows:

SECTION 207. VEHICLE AND VEHICLE ENGINE COMPLIANCE TESTING

Section 207 would represent a significant departure from prior provisions for control of vehicle emissions. At the present time compliance with national emission standards for vehicles and engines is determined on the basis of whether the average of a class or model complies with the standard. Section 206 continues this procedure. Under section 206 prototype models would be certified as to compliance with standards and production-line sample-testing would be authorized to assure that the average of the models coming off the production line conforms to preproduction certification.

Under section 207, each production line vehicle would be required to comply with applicable emission standards. Each vehicle would be required to comply with standards for a 50,000-mile lifetime. The manufacturer would be required to warranty the performance of each individual vehicle as to compliance with emission standards. The dealer would not carry any obligation under this provision.

This section would provide two methods to determine whether or not individual cars will perform to the emission standard. First, the Secretary would be provided with the authority to test representative samples of vehicles on the road and, if he found that a representative sample of a model or class fails to continue to comply with the standards within the 50,000-mile period, he could require the manufacturers to recall that model or class for the purpose of correcting any nonconformity.

The second compliance testing method would be triggered by the development of a quick test procedure. The Secretary would be required to develop a test which could be quickly and uniformly applied to individual vehicles on the production line and on the road to determine whether or not those vehicles comply or continue to comply with the standards for which they were certified. The quick test would have to be correlated with the precertification test procedure. It would have to be a test which could be applied in a reasonable period of time related to the normal time for a regular vehicle inspection. A quick test should avoid unnecessary slowdown of production lines, unnecessary consumer inconvenience, while providing a method to determine whether individual vehicles on the road are continuing to meet the standards for which they were certified.

The need to assure individual vehicle compliance became evident after sample-testing of vehicles on the road (both from California and nationally) revealed deterioration from conformance with the standard.

According to testimony of the National Air Pollution Control Administration:

"The more complete data confirm that slightly more than one-half of the cars tested failed to meet either the hydrocarbon or the carbon monoxide standard. For one model, more than 80 percent of the cars tested failed one or more tests. Due to the small number of cars, these emission data were not extrapolated to 50,000 miles; however, on the basis of the California data one would expect that the emissions would tend to increase to some extent with increased mileage accumulations."

This bill would require the American people to make a substantially greater investment in motor vehicles to assure that air quality standards are implemented. This investment would be defensible only if the emission control systems continued to conform to standards for the lifetime of the vehicle. Substantial deterioration from the emission standard would mean that the manufacturer was not designing emission control systems which meet the intent of this legislation. It would mean that air quality standards in regions throughout the Nation would not be effectively maintained, and it would mean that potentially billions of dollars of consumer investment would be to no purpose.

The Committee has no reason to believe that emission control would be inexpensive. The automobile industry has indicated that achievement of the 1975 standards set by the bill would be costly—whether such standards were achieved through cleaning up the internal combustion engine or through development of an alternative power source.

The manufacturers informed the Committee that they would not be able to guarantee conformity with emission standards for the anticipated 10-year life of a vehicle. The committee bill provides that 50,000 miles would be the maximum that a vehicle would be required to conform to the standards for which it was certified. The Committee bill would provide that a manufacturer may require reasonable evidence of proper maintenance of a vehicle and must provide written instructions on maintenance, adjustments, service and operation. The Committee hopes that, if the motorist complied with these instructions, emission controls would not deteriorate after 50,000 miles to the extent that ambient air quality would be impaired. The Committee further expects the manufacturer to endeavor to either improve the quality control of emission systems or explore better ways to assure continued compliance beyond 50,000 miles of use.

The warranty required by this section would not become effective until 90 days after enactment of this Act. This delay would be needed so that the manufacturer could prepare instructions for the motor vehicle purchaser. The Committee expects these instructions to be reasonable and uncomplicated. They would have to be approved by the Secretary. During such time as the warranty provision is effective, vehicles manufactured after that date would be required to comply with present standards. Vehicles manufactured in future years would have to be warranted to comply with such standards as may be applicable.

The Committee intends that the public should be made aware of the actual cost, not the manufacturer's price of any air pollution control equipment and warranty. While the Committee recognizes that separation of specific costs for air pollution control may be difficult, it is quite likely there would be a marked increase in cars in 1975. To the extent that such costs are attributed to the control of air pollution emissions the Committee intends that those increases be the actual cost of the air pollution systems involved.

The Committee also recognizes the difficulty in any recall provision of notifying the owners of vehicles. The burden would be placed on the manufacturer to notify both the initial and subsequent purchasers of vehicles. The Committee expects that the manufacturer would not only depend on the files of the franchise dealer, but would, to the extent practicable, use State motor vehicle department registration files to obtain the names and addresses of subsequent purchasers of cars. By establishing a 50,000 mile, no year lifetime for the purpose of warranty, the Committee did not intend to relieve the automobile manufacturers of their responsibility to notify owners of older cars. The 50,000-mile period can be assumed to be 4 to 5 years and the manufacturer should be expected to notify any owner of a vehicle that is five years old or less as to failure to continue to perform to the standard. A decision not to require the manufacturer to repair the vehicle could be made after notice and after finding that the vehicle had exceeded the 50,000-mile warranty period.

Mr. MUSKIE. Mr. President, let me make clear precisely what it provides. It provides that there shall be a manufacturer's warranty of performance for 50,000 miles.

Throughout discussions with the industry over the past 6 or 7 years, that is what they were stating, 50,000 miles. They do not consider that technology would be effective or worthwhile, in terms of cost to the consumer, unless it meets the 50,000-mile test. So we are asking for that, because unless automobiles will perform for a practical proportion of their life, meeting standards initially may not be worthwhile. Fifty thousand

miles is not all their life, 100,000 miles being nearer to a measure of the life of a motor vehicle, but we have taken 50,000 miles, comparable to the 50,000-mile guarantee some companies gave us a few years ago on the drive train and the lubrication question, and we have used that 50,000-mile test on performance.

We understand, of course, that performance depends at present as well upon the extent to which the operator maintains his car. We have said in the report, and made it clear in the language of the bill, indeed, that unless the individual operator meets the manufacturer's instructions with respect to maintaining the car as it relates to the clean air provisions of the automobile, the warranty will not be available to the owner. That is the language of the bill. It was written into the bill, on page 64.

May I read it?

> As a condition to the obligation of manufacturers to correct deficient performance, manufacturers may require the ultimate purchaser and subsequent purchasers of such vehicle or engines (a) to provide reasonable evidence of the time when such vehicles or engines were first placed in regular service and (b) to provide reasonable evidence that prescribed maintenance, adjustment, and service requirements and schedules have been observed. The manufacturer shall furnish with each vehicle or engine written instructions for the proper maintenance, adjustment, operation, and service by the owner or operator.

In addition, Mr. President, the bill provides grant-in-aid programs to States and communities to develop inspection programs and services comparable to the safety inspection services programs, that enable both operator and manufacturer to stay on top of the maintenance problem. That is the key. The industry has recognized that, from the time of its 1967 testimony and before. We have merely responded to that concern of theirs.

We understand that it is not presently possible to build a maintenance-

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proof, clean car, but that it is possible—with the use of a system that is built with some durability in it and some responsibility imposed upon the operator—to assure reasonably clean operation of such an automobile. We have to have the two. One without the other is like a one-legged man.

Mr. ALLOTT. Mr. President, will the Senator from Maine yield me some time?

Mr. MUSKIE. I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER (Mr. PACKWOOD). The Senator from Colorado is recognized for 5 minutes.

Mr. ALLOTT. Mr. President, I think we are all trying to get at the same thing, but on this subject, which I had not intended to speak on, that the Senator from Maine was discussing, it raises some questions in my mind.

First, where is an operator going to get the maintenance necessary to keep his car operating at the supposed level as when he purchased it?

My experience with various cars, and I am sure it is no different from anyone else's in the Senate, is that, to secure competent maintenance on a car at the present time in any respect is almost an impossibility. In fact, even for rather simple operations, it is nothing unusual to have to take back the car two or three times.

So, that is a weak spot in the bill. Whether we can do anything about it, I do not know, but it certainly is a weak spot in the bill.

We are assuming that the automobile manufacturers are able to develop the kind of emission control as contemplated in the bill either by 1975 or 1976. Yet, we still would have another problem.

For example, if I am delivered a car in Washington, D.C., which contains the so-called proper emission controls, and it is in working condition and performance and up to the standards

which have been set, and I drive that car to Denver, Colo., that car will no longer meet those qualifications which held in Washington, D.C.

On the other hand, when I reach Denver, if I am fortunate enough to find a garage in which I can get the emission controls on the car corrected so that they meet the standards when the car was delivered to me, I still have a problem when I leave and drive to, say, Vail or Dillon, and I cross two mountain passes, one of which is a few thousand feet, under 12,000 feet, and the other is in excess of 11,000 feet, the car will not meet the emission standards there. Therefore, under the provisions of the bill, I am contributing to a violation of the bill and its purposes. Because one simply cannot create an emission control which will be workable at sea level, at 5,000 feet, at 11,000 feet, or at 12,000 feet or, again, at 8,500 feet.

I do not know whether this means that, as an operator I would have to—and this would affect a lot of people in my State—have my car taken to a garage at each change of altitude, but there are factors like this—although I have not gone extensively into consideration of the bill—which have to be considered. As I say, the first thing which concerns me is the ability of an operator of a vehicle to get it adequately cared for and the second thing is the change in climatic conditions. The car is affected by climatic conditions and not just by altitude. The change in emission in any particular application of a car is caused by a change in climate and a change in altitude.

Mr. GRIFFIN. Mr. President, will the Senator yield rather briefly?

Mr. ALLOTT. I yield.

Mr. GRIFFIN. Mr. President, I want to clear up something I said earlier. At one point I believe I indicated that there are no testing procedures available at the present time. That was an error. It is possible to test the exhaust of a car now. But I am told that it takes $50,000 worth of equipment, several highly trained technicians, and 13 hours of time for each test of each car.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. GRIFFIN. Mr. President, I am referring to the kind of a test that would be necessary to determine the performance level after 10,000 or 50,000 miles.

Mr. ALLOTT. That is on an individual car.

Mr. GRIFFIN. That is on one individual car. Now, what is lacking and needed is a quicker, more convenient, and cheaper way of testing.

Although the bill itself does not say anything about this, the committee report contemplates that the Secretary of Health, Education, and Welfare, hopefully, will develop some quick testing procedure—a procedure not available at the present time. In the meantime, there are no practical testing procedures.

There is no indication in the bill as to who would pay the cost, how it is to be paid, or who would provide the equipment. However, the warranty provision goes into effect, nevertheless, 90 days after enactment of the bill.

Mr. ALLOTT. The Senator is correct. However, it is the Senator from Michigan and I, the users, who are going to pay for the testing and for whatever controls are put on the car. There can be no question about this. That is true of the American people in this whole area of environment, ecology control, and so forth.

There is no use in kidding ourselves. The American people will be spending

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a lot more for a lot of products in order to have the industries meet the standards that Congress is promulgating now. I think they are proper. I think we are proceeding in the right direction. However, it is John Q. Public who pays and who will pay for the testing and for the maintenance and all the rest of it.

Mr. MUSKIE. Mr. President, in response to the point made by the distinguished Senator from Michigan, the committee has long been aware of the need for a quickie test, so-called. This is why we geared the warranty provision to such time as the Secretary is satisfied such a test exists. The 90-day provision that is in here now, and that might be in effect imposing the requirement on the industry before such a test is developed, is at the insistence of the industry.

I repeat that the bill proposed by the committee would have been geared to the establishment of a quickie test.

I have no objection to modifying the bill to return it to what it was. I assume that the industry had some reason for insisting upon the 90-day provision.

With respect to the points made by the Senator from Colorado, he says that the points he made reflect the weakness of the bill. I take issue with that statement. The weaknesses that are reflected are endemic in the industry and the internal combustion engine.

The industry itself has recognized this over the years. And it has constantly striven to make the automobile maintenance-proof. It has undertaken to stretch out the life of the lubrication system, to reduce the number of times or the frequency of lubrication, and so on.

The industry recognizes that the American motorist is not a good maintenance engineer. Therefore the industry has worked to make the car maintenance proof.

I think the greatest problem the industry faces is the shortage of mechanics across this country. As a matter of fact, if there were sufficient mechanics and if each owner followed the particular maintenance schedules of the automobiles, without any new technology or new devices, they would be substantially cleaner vehicles. I do not know the extent to which they might be cleaned up, but I suspect that 50 percent might not be a bad target at which to shoot. That is because of maintenance problems.

We cannot by legislation remake the automobile industry. We brought pressure on the industry from the beginning, 7 years ago, to press with urgency, not merely for control of the internal combustion engine, but for the electric automobile, the external combustion engine, and other ideas that might develop in order to get away from the problem of the internal combustion engines. That is because the internal combustion engine has greater maintenance problems than the electric or the external combustion engine would if it were developed.

The industry likes the internal combustion engine. It likes the comfort and the conveniences it has built into it.

The pending bill does not say to the industry, "You have to stick with this." It does not say that Congress is committed to the internal combustion engine.

We cannot solve the problem of whatever technology the industry chooses to put its bets on. All we can do is to set the standards.

The automobile industry has created all of the problems from the top to the bottom. The corner service station is related to the fact that Detroit built an automobile with an internal combustion system.

The dealer on Main Street is a product of the manufacturer in Detroit. He gets his franchise from them. He gets the manufacturer's requirements

as to what kind of building he should construct, what kind of service he should provide.

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The key to controlling the situation is in Detroit. As a matter of fact, the Senator from Tennessee (Mr. BAKER) has persisted in making the point that it is not for us to say how these things should be done, but rather what performance standards are to be met.

So, if the bill is weak in not providing for the solution of the maintenance problem, I would welcome an amendment that would cure that weakness. But I do not think there is any way of writing a law that will create maintenance capability all across the country. Only the automobile industry can do that.

Mr. ALLOTT. Mr. President, I would have to take exception to the statement about the automobile industry, because I think the internal combustion engine has resulted in great efficiency. The torque, the r.p.m., speed of pickup, all of those factors are things that the American people have demanded.

Mr. MUSKIE. Mr. President, they have demanded it because of the automobile industry's advertising. There is plenty of testimony to the effect that we do not need power built into the automobiles. The appetite for the power has been stimulated by advertising.

The Senator knows that if the industry had chosen to put its muscle behind low power cars, lighter cars, cheaper cars, emission-free cars, it could have sold them. Does the Senator from Colorado doubt that?

Mr. ALLOTT. I think only within limits could they have done that. My feeling is that what the automobile industry has done is to meet the demands of the public. I admit, they have advertised and promoted the product just as one would promote suds or some other kind of detergent. This is part of the American way of life.

Mr. MUSKIE. Mr. President, I can recall driving an automobile back in the mid-thirties——

Mr. ALLOTT. Mr. President, I will get the floor later if the Senator wants it.

Mr. MUSKIE. I thought the Senator had yielded the floor. I had gotten the floor and was speaking and the Senator from Colorado interrupted to ask me a question.

Mr. ALLOTT. The Senator yielded to me. It is all right.

Mr. MUSKIE. Mr. President, I can recall driving my first automobile. It had 100 horsepower. I cannot recall demanding 200. I cannot recall even thinking about it until the industry put it in my mind.

Mr. President, now I insist on something at least that powerful or more. The idea did not originate with me, but with the industry. I must say I enjoy it.

I say to the Senator that this bill is not directed only to the automobile industry. This bill is going to require that the American motorist change his habits, his tastes, and his driving appetites. Of course, he has to, if we are to revert to a lighter car and a lower powered car. Those two factors, without any technology, could drastically reduce emission. The consumer also must make sacrifices in addition to those made by the manufacturer. So it is rather pointless to argue about whether the appetite rose in industry advertising or within the minds of consumers. The fact is both must now modify their concept of what tomorrow's automobile should be.

Mr. GRIFFIN. Mr. President, I yield 5 minutes on the bill to the Senator from Colorado.

The PRESIDING OFFICER (Mr. BAYH). The Senator from Colorado is recognized.

Mr. ALLOTT. Mr. President, I want to say in response to what has been said here that I am sorry there really is only one authority on automobiles on the floor although apparently there are others who have driven a little bit.

Mr. MUSKIE. Would the Senator identify the authority?

Mr. ALLOTT. Would the Senator repeat his question?

Mr. MUSKIE. Would the Senator identify that exclusive authority? I had not recognized it.

Mr. ALLOTT. I have been listening to him for a little bit here.

Mr. President, I am frank to say, to get back to this matter, we will have several problems and one will be with maintenance. I think if it were possible today to check the personal car of each Senator, I would doubt very much if any is operated within 75 percent of its specifications. It is impossible to get repairs to get them to operate at much more than that—maybe 80 percent, and I am being kind at that. That is the point I make.

In the operation of this particular matter one cannot apply the same standards to an automobile here and an automobile that is driven to Denver or over into the mountains, and have that car meet the standards that it did when it was originally made and delivered, even if it were 100 percent. No one can deny that. No automotive engineer that I know of anywhere in the country will deny it.

Second, I do think that we have to think not only in terms of what is going to happen to our engines when we have to drive them across the country, but we have to think of maintaining them. These are the two points I make. Nothing I have heard convinces me otherwise, and I am susceptible to being convinced. I would like to hear if there are answers to those points.

But what are we going to do with people who have the kind of country we have in Colorado where one goes from 3,000 feet in some parts of our State to 12,000 feet, and 12,000 feet is nothing unusual in our State; and then, the car will have to be adjusted every 5 miles as it goes up 1,000 feet. These are the problems we face.

I do not say the bill is wrong for that reason, but there are problems we have to face and it does not do any good to say the automobile industry inflicted this on us.

Mr. HART. Mr. President, may I have 3 minutes?

Mr. MUSKIE. I yield 3 minutes to the Senator from Michigan.

Mr. HART. Mr. President, getting back to the testing requirements, my able colleague from Michigan raised a point I thought was completely valid; namely, that the obligation becomes effective 90 days after enactment but there is not available presently the means within reason to make the tests.

I was surprised to hear from the able Senator from Maine that originally he had shared that concern, but the committee had changed the language at the specific request of the automobile manufacturers.

None of us claims infallibility about anything, but I wonder if Detroit, given the opportunity for second thoughts on this, would not agree with my colleague from Michigan, that the original position of the committee would be much more desirable. Under the original language the obligation would not become applicable until 90 days after there was available reasonably the means for a test. The Secretary would be obliged to make an executive finding, that such a test existed before the obligation would arise.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. HART. I yield.

Mr. GRIFFIN. I do not know. I take the Senator from Maine at his word. I do not know what the position of the industry was before his committee. I find it inconceivable that they would ask for a warranty to go into effect 90 days after enactment if there was a provision in the bill that said it would not go into effect until a certain testing procedure was developed; and we have no idea at the present time how long it will take to develop.

Mr. HART. I find in the committee report language to suggest it was indeed the committee's original intention and, for some reason, apparently at Detroit's request they put in the requirement that it go into effect 90 days after enactment. We find in the report on page 29, fourth paragraph, this language:

> The second compliance testing method would be triggered by the development of a quick test procedure. The Secretary would be required to develop a test which could be quickly and uniformly applied to individual vehicles on the production line and on the road to determine whether or not those vehicles comply or continue to comply with the standards for which they were certified.

Mr. GRIFFIN. If I may pursue this further, when we talk about the Secretary developing quick tests, I wonder if anybody, including the Senator from Maine, has any idea how much it will cost to make quick tests available all over the country and how long it will take.

Mr. MUSKIE. If we knew we would not need to give the Secretary discretion, would we?

Mr. HART. But we have not given him discretion in the bill as reported.

I feel it would be preferable to state something on the order of:

> *Within 90 days after the Secretary establishes methods and procedures for the tests required that this obligation be established.*

I cannot understand why that is not in the interest of the manufacturers and all dependent on the industry.

Mr. MUSKIE. I find that language completely acceptable. I agree it is asking a great deal to impose a warranty

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before we have a test to measure whether or not the warranty is being violated.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MUSKIE. I yield myself another 5 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for another 5 minutes.

Mr. MUSKIE. I would be perfectly agreeable. May I suggest that here are three Senators discussing this matter. Why do we not decide what should be in the bill and recommend it to the Senate? We seem to be in agreement. I am for it and the two Senators are for it.

I suggest we offer the amendment to the bill and let the Senate act on it.

Mr. GRIFFIN. I would support the amendment. It is a small step in the right direction, but it points out how ridiculous this portion of the legislation is.

Mr. MUSKIE. Mr. President, if the Senator will yield, as compared to what the committee had in the bill, if it has become ridiculous because of this provision, the source of the ridiculousness is not the committee.

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

It is ridiculous to say a warranty shall be effective 90 days after enactment when there is no testing procedure available. It would also be ridiculous to say the warranty provision would be effective 90 days after the Secretary develops a quick test, whatever that is, when we have no idea if this quick test can be made available throughout the country in 90 days, how much it would cost, or what would be involved. It is legislat-

ing in the dark, and it is ridiculous.

Mr. HART. Mr. President, let us take the small step, anyhow.

I would offer as an amendment the addition of this language beginning on page 63, at line 19, striking nothing, but inserting prior to the language appearing on line 19:

Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b)—

And, as a necessary conforming amendment, I am advised that a change on page 82, line 10, would be required; namely, deleting the reference to "207(c)".

I would inquire of the manager of the bill——

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that an amendment is pending.

Mr. COOPER. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. COOPER. I am withdrawing my amendment to amend section 207. I think the discussion that insued following my calling it up indicates some of the problems that we had in the committee. Since I am no engineer—in fact, since 1936, I have not owned a car, nor have I driven a car in 20 years—I think there are problems in the warranty amendment. However, trying to separate the warranty as between a construction and design warranty from a warranty which would extend to performance of automobiles driven by 100 million drivers is extremely difficult.

There are provisions in the bill which seem to put pressure on the manufacturers to produce a design which will last 50,000 miles or the life of the car. These include certification by the Secretary; second, a provision that it will require testing on the production line; third, a provision that the Secretary can test it at any time; fourth, that the Secretary can order recall of any number of cars from any number of owners; and finally, penalties of up to $10,000 if a car is put in commerce which will not meet these standards.

So it seems to me there was a question as to whether there should be a performance warranty. As I have said, my knowledge is not sufficient to comprehend it. With other problems of the committee, we may not have gone into it as fully as we could. I wanted to raise the matter because I think it is proper that we have some further discussion of it in conference; but I withdraw the amendment.

The PRESIDING OFFICER. The amendment of the Senator from Kentucky is withdrawn.

Mr. HART. Mr. President, I offer an amendment providing that the following language be inserted on line 19, page 63:

Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b)—

The PRESIDING OFFICER. Will the Senator send his amendment to the desk?

Mr. HART. Mr. President, this amendment is offered by my colleague from Michigan (Mr. GRIFFIN) and myself.

The PRESIDING OFFICER. The amendments offered by the Senator from Michigan will be stated.

The legislative clerk read the amendments, as follows:

On page 63, line 19, after "(c)", insert "Within 90 days after the Secretary shall have established feasible methods and procedures for making tests as required by subsection (b),".

On page 82, line 10, strike out "207(c),".

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, as I

have already indicated, I am willing to accept this amendment. I am happy to yield back my time.

Mr. HART. Mr. President, I think I have indicated that the amendment is offered both by myself and my colleague (Mr. GRIFFIN).

I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing, en bloc, to the amendments offered by the Senator from Michigan (Mr. HART) for himself and Mr. GRIFFIN.

The amendments were agreed to en bloc.

Mr. COOPER. Mr. President, I call up two amendments which were to be offered by the Senator from Tennessee (Mr. BAKER), but which have not yet been called up.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 90, line 24, after the word "know-how" insert the following: "which is being used or intended for public or commercial use and".

Mr. COOPER. Mr. President, it was necessary for the junior Senator from Tennessee (Mr. BAKER) to leave the city. Prior to his departure he sent to the desk two amendments to modify section 309 regarding mandatory licensing. I understand he discussed the amendments with the manager of the bill (Mr. MUSKIE) and the manager on the minority side (Mr. BOGGS). I believe there is no opposition to the amendments. The Senator from Tennessee asked if I would call the amendments up for adoption and include for the RECORD his statement in support of the amendments.

To the extent that section 309 covers all know-how and trade secrets known to the owner of my patent, know-how or trade secret, it is too broad to be meaningful. It is important that any know-how or trade secrets used in the manufacture of commercially available devices, vehicles or engines be licensed, but it would be unworkable to require all industries to disclose all know-how and trade secrets, whether used commercially or not.

Thus, the section should be limited to know-how or trade secrets used commercially, whether or not the section is limited to the industries covered in title II.

Mr. MUSKIE. Mr. President, I discussed this amendment with the Senator from Tennessee and the Senator from Kentucky. The American Bar Association patents section raised this question. It is a technical matter. I am perfectly willing to accept the amendment, and also the next amendment which I think the Senator will offer. I think there is no objection on the part of the committee.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. MUSKIE. I yield back my time.

Mr. COOPER. I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment offered by the Senator from Kentucky.

The amendment was agreed to.

Mr. COOPER. Mr. President, I send to the desk the other amendment which was intended to be offered by the Senator from Tennessee (Mr. BAKER).

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 92, beginning at line 7: strike out the subsection (c) and subsection (d) and insert the following new subsections:

"(c) If the owner of any United States letters patent, patent application, trade secret, or know-how and any applicant for a license thereunder pursuant to subsection (a) are unable to agree upon reasonable royalties

to be charged under such license or upon any other provision which might be included in such license pursuant to subsection (b), either party may seek a declaration of the amount of royalties to be charged or any other provision of such license in an action for declaratory judgment under Sections 2201 and 2202 of Title 28 of the United States

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Code in a court of competent jurisdiction regardless of the amount in controversy or the citizenship of the parties.

"(d) The court, in issuing any order or judgment on any action brought pursuant to subsection (c) of this Section may award or apportion the cost of litigation, including reasonable attorney and expert witness fees whenever the court determines that such action will do justice in the case.

"(e) Nothing in this section shall be construed to grant an exemption from the antitrust laws of the United States or any judgments, ordered or decreed thereunder."

Mr. COOPER. Mr. President, this is the other amendment that was to have been offered by the junior Senator from Tennessee (Mr. BAKER). He asked me if I would call it up. He informed me that he had discussed it with the manager of the bill (Mr. MUSKIE) and the manager on the minority side (Mr. BOGGS).

Senator BAKER has an explanation of some length, which I shall not read in full but summarize it in substance, as I understand it. Under this section of the bill, if there were a matter which came to arbitration as to royalties, it would be resolved through the rules of the American Arbitration Association. Senator BAKER's amendment would provide for substituting a judicial declaratory judgment approach to resolve royalty disputes in the place of the compulsory arbitration route.

I ask unanimous consent that the complete statement of the Senator from Tennessee be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

DECLARATORY JUDGMENT ROUTE

Section 309(c) of the bill, as amended in Committee, deviates from other provisions of the bill with respect to the manner in which disputes arising under the act should be resolved. It heaps compulsory arbitration upon compulsory licensing, without any right of judicial review.

The bill provides for arbitration under the rules of The American Arbitration Association then in effect. Congress has no control over those rules and they may be changed over night without Congressional control or approval. On the other hand, the rules under which the federal judiciary operates are subject to control by Congress and the procedures available in the Federal Courts under the declaratory judgment statute are well established and adapted to resolve disputes over such things as royalty rates and protection of know-how and trade secrets against disclosure to unauthorized persons.

The purpose of substituting the declaratory judgment route for the compulsory arbitration route, is not only to utilize well known, established procedures in the Federal Courts but also to establish legal precedents to aid in the implementation of the legislation.

Utilization of the federal judiciary will also maintain a balance between the Executive Branch and the judiciary in implementation of all of the provisions of the act instead of relegating the determination of legal relationships to lay arbiters outside the framework of our national government.

The provision for awarding or allocating costs, attorney and expert witness fees is substantially the same as that set forth in Section 304(b) with respect to citizen suits and allows for the application of equitable principles in allocating such costs to prevent injustice.

Mr. MUSKIE. Mr. President, I have already indicated that I have discussed this matter with the Senator from Tennessee and the Senator from Kentucky. This is another amendment in response to questions raised by the section of the American Bar Association dealing with this subject. I think it makes sense. I support the amendment, and I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Kentucky yield back the remainder of his time?

Mr. COOPER. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment offered by the Senator from Kentucky in behalf of the Senator from Tennessee (Mr. BAKER).

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I send to the desk an amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 69, line 20, insert after "except" the following: "In the case of vehicle or vehicle engines".

On page 70, lines 22 and 23, strike "particularly such control, regulations or restrictions necessary". On line 23 after "with" insert "plans for the implementation of".

Mr. RANDOLPH. Mr. President, I have discussed this amendment with the able Senator from Maine, the chairman of our subcommittee.

The language of section 210, as reported, seemed to me not to appear to fully reflect the intent of the committee with regard to Federal preemption for aircraft, as well as vessels and commercial vehicle operations. The omission on page 69, line 22 of the word, "vehicle," before the word "engines" clouds the precision of the preemption and raises the question of whether States will have the authority to require more restrictive emission standards for aircraft engines than those established by the Secretary under section 202(a). This problem can be remedied by the addition on line 20 after the word "except", the words: "in the case of vehicles and vehicle engines".

Mr. MUSKIE. Mr. President, I think the amendment clarifies the intent of the legislation, and I support it. I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from West Virginia yield back the remainder of his time?

Mr. RANDOLPH. I do.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from West Virginia.

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, I send to the desk another amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 10, line 20, insert the following language as a new paragraph (4) at section 109(a):

"Section 109 (a) (4): The Secretary may establish a standing consulting Committee for each air pollution agent or combination of agents published pursuant to subsection (a) (1) of this section, which shall be comprised of technically qualified individuals representative of state and local governments, industry and the academic community. Such Committee shall recommend to the Secretary appropriate information as he may request on pollution control techniques applicable to such air pollution agent or combination thereof for distribution to the States and to appropriate air pollution control agencies. Such information shall include (i) data relating to the technology and costs of emission control, (ii) such data as are available on the latest available technology and alternative methods of prevention and control of air pollution, and (iii) data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions."

Mr. RANDOLPH. Mr. President, I have also discussed this amendment with the able Senator from Maine. It is my belief that since enactment of the 1967 amendments to the Clean Air Act, it has become apparent that one of the deficiencies in the operation of the National Air Pollution Control Administration has been the agency's lack of understanding of industrial pollution control techniques. It is, of course, easy for Government to arrive at a set figure for industry to meet

without giving due consideration to whether those requirements are obtained on the basis of available control technology.

At times Government officials may believe that where the literature sets out a method which has been proven in the laboratory or in a pilot plant, then this method can be successfully utilized by industry in abating a given air pollution problem. This may or may not be true. Occasions have arisen when there has been a distinct conflict between inexperienced Government technical personnel and industry representatives who must do the "nuts and bolts" work of solving a given air pollution problem. For that reason, I believe it is important that the Secretary of Health, Education, and Welfare have the authority to establish standing consulting committees on the pollutants for which criteria have been issued. These standing committees would advise the Secretary on the appropriate control technology for each pollutant. Following the procedure specified, the information would then be issued to State and local control agencies in the form of a control techniques document.

Senators have noted that we use the language "as he may request." Certainly this would be done after consultation with appropriate advisory committees and Federal departments and agencies.

It should be emphasized that under the present language of section 107(c) of the Clean Air Act, the Secretary of Health, Education, and Welfare is authorized to issue to the States and appropriate air pollution control agencies information on recommended pollution control techniques after consultation with appropriate advisory committees and Federal departments and agencies.

All of us recognize that air pollution and its control is a major issue facing the country today. We all want to improve the quality of the air we breathe as rapidly as possible. However, in the process we need to use care that the control methods which are recommended by Government are based on available con-

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trol technology and not merely on theoretical considerations.

I sincerely believe the amendment I have proposed today would be helpful in assuring that the control techniques recommended by NAPCA are practical ones and ones capable of being used successfully by industry in the strenuous efforts which will be needed if this country is to solve its air pollution problems.

I commend, as I have done on many occasions, the able leadership of the Senator from Maine (Mr. MUSKIE). I compliment him for the work he has done on this important bill.

Mr. MUSKIE. I thank the distinguished Senator from West Virginia.

I have indicated my willingness to accept this amendment. Before doing so, I would like to reemphasize that the concept of this bill as it relates to national ambient air quality standards and the deadlines for the automobile industry is not keyed to any condition that the Secretary finds technically and economically feasible. The concept is of public health, and the standards are uncompromisable in that connection.

Nevertheless, under the law since 1967, and after the enactment of this law if it becomes law, there is a requirement on the Secretary, when he issues the criteria documents, to issue, in addition, information on the technology available to deal with the pollutants in question.

The amendment of the Senator from West Virginia would create a mechanism in the form of consulting committees to provide information to the Secretary on request.

Mr. RANDOLPH. That is right.

Mr. MUSKIE. To assist him in preparing those technological documents. I think it would be a most useful device, and for that reason, I support the amendment.

Mr. RANDOLPH. Mr. President, commenting just briefly further, not desiring to take additional time, except to underscore what I have said: This is not a matter of competition between Government and industry. I think, actually, we can complement one the other in an effort to achieve the technology which is needed.

I appreciate the reasonableness of the position taken by the able Senator from Maine.

Mr. MUSKIE. I yield back the remainder of my time.

Mr. RANDOLPH. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment of the Senator from West Virginia.

The amendment was agreed to.

Mr. MUSKIE. Mr. President, I yield 3 minutes to the distinguished Senator from Kentucky (Mr. COOK) on the bill.

Mr. COOK. Mr. President, yesterday the Senate took up consideration of S. 4358, the National Air Quality Standards Act of 1970. All of the members of the Public Works Committee deserve credit for their tireless efforts in marking up and reporting out what may very well be one of the most significant pieces of legislation of the 91st Congress.

Of course, much attention has been focused on certain sections of the bill, such as section 202 which requires that 1975 model automobiles achieve at least a 90-percent reduction from the 1970 emission standards.

Because of this very close examination of these sections by many of my distinguished colleagues, I shall confine my remarks to section 306, "Federal procurement."

It is with great interest that I take up this section, because on March 20 I introduced S. 3614, the Federal Procurement and Environmental Enhancement Act of 1970. In essence, it would prohibit all departments, independent agencies, and other instrumentalities of the United States using federally appropriated funds, from purchasing goods, materials and services from any person operating in violation of Federal air or water pollution control laws. On May 6 I testified before the Air and Water Pollution Subcommittee on behalf of this measure—which, incidentally, was cosponsored by 10 of my colleagues, including the distinguished senior Senator from Montana. Also, the distinguished chairman of the Air and Water Pollution Subcommittee introduced two major air and water quality bills containing similar, but less comprehensive provisions.

With three exceptions, I shall not explain in detail the provisions of S. 3614. However, I ask unanimous consent that my testimony be printed in the RECORD at this point.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF SENATOR COOK

Mr. Chairman, I thank this very busy and productive subcommittee for allowing me the opportunity to discuss the concept of prohibiting the federal government from purchasing goods or services from persons in violation of federal pollution control laws.

On March 20, I introduced S. 3614, the "Federal Procurement and Environmental Enhancement Act of 1970," which would accomplish this purpose by amending the Clean Air and the Federal Water Pollution Control Act. If enacted, it would prohibit all departments, independent agencies and other instrumentalities of the United States using federally appropriated funds from purchasing goods, materials and services from any person operating in violation of these two laws. It would require the establishment of contract regulations and the insertion thereof, in all federal

procurement contracts.

Sections 13(B) (C) and 113 (B) (C) make mandatory the establishment of contract regulations, and the insertion thereof, in all federal procurement contracts.

By Section (C)(1), the contractor or seller agrees to furnish adequate proof or compliance with the aforementioned air and water pollution acts. I would interpret this to mean a simple statement of compliance. In the alternative, at the time of contract the seller agrees to implement an affirmative plan for compliance pursuant to those acts.

This section takes into account those manu`acturers who are earnestly trying to comply with federal pollution laws, while penalizing those who refuse to comply. At the discretion of the Secretary, it also permits the transaction of business with those persons who have filed implementation schedules with the Federal Water Pollution Control Administration and the National Air Pollution Control Administration.

Second, upon notice of a violation—and with notice to the seller—the government is compelled to terminate the agreement. Section (C)(2) also relieves the government of any damages, penalties or other liabilities.

Third, Section (C)(3) permits the continuance of a contract, otherwise terminated, if the seller has implemented an affirmative plan or schedule pursuant to the Air and Water Pollution Control Acts.

Fourth, the last contractual requirement, Section (C)(4) exempts the government from adjusting either the contract price or the delivery or performance schedule due to continuation of the agreement under (C)(3).

A distinction is made in Section (F) between a "contract directly related to a pollution action" and all others. Only in the former would the termination, continuance, and exemption procedures of (C)(2), (3) and (4) apply. The Secretary of the Department of Health, Education, and Welfare or of the Department of the Interior, after consulting with the appropriate contracting agency head, determines the direct relatedness of the pollution action to the contract.

As an example, where the "X" Supply Company's paper factory is violating either the Air or Water Pollution Control Law—all "X" paper contracts with the government are subject to immediate suspension and termination. However, all other "X" contracts supplying other office equipment are not subject to this immediate action.

Section (F) is intended to prevent undue chaos where a large manufacturer supplies a diverse number of items to many government agencies. An immediate end to all such contracts may produce unnecessary adverse effects. Therefore this section provides that such contracts not directly related "shall continue until completed, at which time the prohibition becomes effective." Consequently, once the government is notified that "X's" paper factory is an unrepentant polluter, henceforth, "X" will be ineligible for all procurement contracts.

Section (A) declares that such person is ineligible for a period up to 3 years. At the discretion of the Secretary, the seller may become eligible prior to 3 years if he determines that the pollution has been abated.

To insure that the vast reaches of the federal bureaucracy are informed of individual violations, Section (B) causes both the Secretary of the Department of Health, Education, and Welfare and the Department of the Interior to establish the necessary notification procedures.

Finally, Section (D) exempts the Department of Defense from this act, if the Secretary determines that such exemption is necessary for national defense. It does provide, however, for public hearings on the pollution action. In this manner, the necessary attention may be focused on the problem to encourage voluntary compliance.

Also, the distinguished chairman of this subcommittee has introduced two bills containing similar provisions. Senator Muskie's S. 3546, the "National Air Quality Standards Act of 1970" and S. 3637, the "National Water Quality Standards Act of 1970" state that no federal department or agency shall procure goods from those in violation of these standards.

Mr. Chairman, since the introduction of these measures a number of objections have been raised questioning the need and practicability of such a prohibition.

As to the first objection, I can only say that the prevention of further degradation of the environment requires a total commitment by all—especially the federal government. With a budget exceeding $200 billion per year, the federal government is the largest single purchaser of goods and services. A substantial portion of this amount is for procurement of goods and materials ranging from highly sophisticated weapons

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systems to ordinary supplies necessary for day-to-day operation.

As to its feasibility, it has long been the established policy of this government to declare that an agreed-upon public policy be followed in the government's dealings in the free marketplace. Desired policy has been implemented by both executive fiat and legislation.

Legislatively, the Congress enacted the "Buy American Act" (41 USC 10). This law requires the use of American manufactured materials and American mined supplies in "every contract, for construction, alteration

or repair of any public building". Failure on the part of the contractor to comply may result in his name being placed on a debarment or blacklist and declared an ineligible bidder for a 3-year period.

There have been a variety of standard labor clauses dealing with employment and labor and prescribed for use in government contracts. The Davis-Bacon Act, the *Copeland Anti-Kickback Act* and the *Work Hours Act* (5 USC 673(c); 28 USC 1499; 40 USC 327-332) govern the employment of laborers and mechanics on public works projects. The *Davis-Bacon Act* (40 USC 276a–276a–5) prescribes that such employees are entitled to the minimum wage as determined by the Secretary of Labor to the prevailing corresponding classes of laborers and mechanics or similar projects in the locale where the contract is to be performed. The Copeland Act prohibits the requiring by a contractor from requiring any "kickbacks from any employees so defined in the regulations." The Act is intended to aid in the enforcement of minimum wage provisions of the Davis-Bacon Act and other similar statutes. The Work Hours Act requires that employees must be paid at least time and one-half their basic rates of pay for hours worked in excess of eight hours per day or forty per week.

Contracts for the procurement of services are governed by the terms of the *Walsh-Healy Act*, (41 USC 35). Any contract entered into by the executive or legislative branch or any instrumentality of the United States shall include provisions relating to minimum wages, child labor, maximum working hours and health and safety conditions. A breach of any of these conditions requires not only the cancellation of the contract, but subjects the party to fines as well. In 1965, the Congress passed the *Service Contract Act*, (41 USC 351), extending to employees of government service contracts the federal minimum wage law, a breach of this law subjects the contractor to cancellation and the difference in the wages paid and what is required by law to be paid.

Because of Congress' concern with the decline of the small businessman, 41 USC 252 provides that "a fair proportion of the total purchases and contracts for property and services for the government shall be placed with small business concerns."

By executive action all government contracts and subcontracts must contain an equal opportunity clause prohibiting contractors from discriminating against employees on the basis of race, color, creed, religion or national origin, in hiring, promotion, pay rates and job training. The contract clause also requires affirmative action on the part of the contractor and compliance with executive orders 10925 and 11246, and regulations issued by the Secretary of Labor pursuant to those orders. It also requires the filing of reports and for termination in cases of non-compliance.

The protection of American industry small business, and the social and civil rights of the American laborer are all worthy of a firm governmental policy of enforcement through the procurement of goods and services. I contend that the protection of the environment deserves no less a firm policy.

An additional question raised about S. 3614 is the lack of hearing procedures ensuring a fair termination because of a pollution violation. Experience has shown that the time consuming and complicated procedures required by the Federal Water Pollution Control Act provides more than ample opportunity for an alleged polluter to be accorded a full hearing. In regard to hearings on the contract cancellation due to a pollution violation, the existing standard government contract procedures governing such matters would apply. However, if the present regulations are inadequate, I support any necessary curing legislation.

Also, after reviewing all the pending legislative measures, it appears that they are limited in application to the Federal Water Pollution Control Act and the Clean Air Act. However, because of the long and tedious enforcement procedures involved in these acts, the Department of Justice has recently filed charges under an obscure 1899 federal statute. This law, Section 13 of the River and Harbor Act, (33 USC 407), prohibits the dumping or depositing of "any refuse matter of any kind or description" into any navigable water or tributary thereof. I suggest, therefore, that the subcommittee also consider applying the governmental procurement ban to those persons found in violation of this law.

Mr. Chairman, while the Congress is considering these bills, the Executive Branch has also expressed an interest in this idea. On February 21 I wrote to the Secretary of Defense concerning the President's February 4 executive order in regard to the prevention, control and abatement of air and water pollution at all federal facilities. In the letter, I suggested that the Department of Defense take the lead in administratively implementing—by amending the Armed Services procurement regulations—the suggestions that later developed into S. 3614. The Department ruled that a White House directed inter-agency task force was exploring the possibility of developing "a comprehensive federal program for utilizing purchasing, contracting and other policies to reduce environmental pollution". (At this point, I insert for the record, copies of this correspondence.) I have requested a status report on the work of the task force, but thus far I have received no reply.

On February 24, I wrote a letter to every cabinet level department requesting their comments on the implementation of the procurement ban at the department level. Most of the replies stated that (1) any revision of procurement contracts should be directed to

the General Services Administration, or (2) the White House is presently studying this matter. However, the Department of Interior replied that they have "reached the conclusion that we must include provisions in our contracts and grants requiring contractors and grantees to comply with regulatory standards." But, the Department also recommended that to have the desired effect any such procurement requirement must have government-wide application. (I include in the record, my letter and the replies from Interior and the other departments.)

Mr. Chairman, the federal government has an obligation to provide moral leadership in the fight for a livable environment. The passage of this legislation would not only be a positive step in this direction, but also give industry additional incentive to comply with existing law. I, therefore, urge the subcommittee to give serious consideration to this proposal.

Mr. COOK. Mr. President, section 306 of the committee bill, while similar in principle, departs considerably from S. 3614 and the existing law upon which it was modeled. First, the procurement prohibition takes effect only upon a "knowing" violation of standards defined in the act. I see no reason for the insertion of an additional factor which can only work to the detriment of the purpose of the section. The word "knowing" creates a presumption not found in similar and existing laws.

Other Federal procurement laws are not encumbered by such language. The Buy American Act—41 U.S.C. 10, 10(b)—bars a contractor from Government work for a period of 3 years upon "a failure to comply with such provisions" of that act. The Walsh-Healy Act—41 U.S.C. 35—relating to minimum wages, maximum working hours, child labor laws, and health and safety conditions, subjects a violator to its penalty provision upon "any breach or violation of any of the stipulations" in the contract. Also, the Service Contract Act—41 U.S.C. 351—which extends to employees of Government service contracts the Federal minimum wage law, subjects a violator to the procurement penalty upon "any violation" or "when a violation is found." Mr. President, I contend that pollution violators deserve no greater protection than other lawbreakers.

Another major difference between the two measures is that section 306 of the committee bill only applies prospectively. Therefore, a polluter presently in violation of air quality standards is allowed to continue any existing contract, and to continue profiting from the U.S. Government at the expense of the community. However, S. 3614 applies not only prospectively, but also provides for the cancellation during the life of the contract should a pollution violation occur after both parties enter into the agreement.

Again, I can only cite the Walsh-Healy Act which permits the Federal Government to cancel a contract and "to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor." The Service Contract Act also provides for "cancellation" and the charging of additional cost.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MUSKIE. I yield 2 additional minutes to the Senator.

Mr. COOK. The last major difference between the two measures is that S. 4358 would apply the procurement ban only to "any facilities subject to such action by the court which are owned, leased, or supervised by such person." In explaining this language, the committee report states that procurement sanctions are limited "to contracts affecting only the facility not in compliance, rather than an entire corporate entity or operative division." It further states that a company with a "contract unrelated to the violation" is eligible for business with the Federal Government. I must differ with the committee on this

point. It is possible, even with the strong sanctions contained in this act, that a large and diversified corporation may continue its multi-million dollar contractual arrangements with the Government even though one of its plants or factories is guilty of a so-called "unrelated violation." I can see no reason for such distinction.

A company is either in compliance with the law, or it is not in compliance.

The Government will either do busi-

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ness with pollution lawbreakers, or it will not do business with pollution lawbreakers.

If a total procurement ban is in effect for the entire company it will certainly encourage compliance with the law. That I believe should be the purpose of section 306. That is the purpose of S. 3614.

Mr. President, I feel very strongly about the points I have discussed. However, I am fully aware of the pressures that the Public Works Committee operated under in drafting this far-reaching legislation. I commend the committee for reporting out the most stringent pollution control legislation in history. Therefore, in order that the Senate conferees may press for complete acceptance of the bill in conference with the House, I decline to offer my suggestions as amendments. However, since the House bill differs from ours, I fully expect my distinguished colleagues to retain section 306 in conference.

Mr. MUSKIE. I yield myself 2 minutes.

Mr. President, I compliment the distinguished Senator from Kentucky for having pressed this concept. Had it not been for his interest, I am sure that we would not have it even in its present form in the committee bill.

I ask unanimous consent to have printed at this point in the RECORD the portion of the committee report relating to this subject, so that we may have a full understanding of what the committee had in mind.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SECTION 306. FEDERAL PROCUREMENT

The Committee considered proposals offered by Senator Muskie and by Senator Cook to assure that the Federal Government does not patronize or subsidize polluters through its procurement practices and policies.

Section 306 would make any person or corporation who fails to comply with a court order issued under this Act or who is convicted of a knowing violation of any schedule or timetable of compliance, emission requirement, prohibition, emission standard, or standard of performance, ineligible for a Federal contract for any work to be done at the polluting facility. This ineligibility would continue until the Secretary certifies that the facility is in compliance with the court order or the provisions of the Act.

This section would be limited, whenever feasible and reasonable, to contracts affecting only the facility not in compliance, rather than an entire corporate entity or operating division.

There might be cases where a plant could not participate in a Federal contract due to a violation but another plant owned by the same company might bid and transfer work to the first plant. This type of action would circumvent the intent of this provision. In this case, the company's second facility should also be barred from bidding until the first plant returns to compliance.

There would also be instances where a second plant within a corporation was seeking a contract unrelated to the violation at the first plant. In such a case, the unrelated facility should be permitted to bid and receive Federal contracts.

It is anticipated by the Committee that the Executive Branch will, in the near future, publish new Federal contract guidelines that will enable the Federal Government to suspend or revoke a contract once the contracting party is found to be in noncompliance with the air pollution standards or other requirements of this Act. This executive action would be specifically mandated by section 306(c).

The effectiveness of this section would depend on fast, accurate dissemination of information. All Federal agencies would have to be rapidly apprised of any abatement order or conviction which would bar a facility from eligibility for Federal contracts. The

Secretary would also have to act expeditiously to certify that a facility had achieved compliance, and notify all Federal agencies of that fact. Delays in reporting such information, leading to inaccurate public disclosures, would quickly render this section unworkable.

Mr. MUSKIE. Mr. President, earlier I sent to the desk an amendment on behalf of myself and the Senator from Kentucky (Mr. COOPER). I call up the amendment at this time.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. MUSKIE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so directed; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 48, line 11, insert the following new paragraph (4), and renumber succeeding paragraphs:

"(4) Six months following enactment of this section, and each year thereafter, the Secretary shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollution agents on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and, following such hearings as he may deem advisable, any recommendations for additional Congressional action necessary to achieve the purposes of this Act. In gathering information for the purposes of the paragraph and in connection with any hearing, the provisions of subsection (5)(B) of this section shall apply."

Mr. MUSKIE. Mr. President, this is an amendment which I offered in committee in lieu of the judicial review amendment which Senator COOPER introduced and which the committee adopted. Nevertheless, the Senator from Kentucky (Mr. COOPER) thought that this provision ought to be included as complementary to his amendment on judicial review, because it provides for periodic reports to Congress on the development of systems necessary to implement the emission standards established pursuant to this section.

I think that those reports would be useful to Congress. I think they would be useful to us in evaluating any request for an extension of the deadline that might be made. So I offered the amendment, and the Senator from Kentucky supports it, and, so far as I know, the whole committee does.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. COOPER. Mr. President, I am glad the Senator has offered this amendment. It would present to Congress, I believe, every 6 months——

Mr. MUSKIE. Six months would be the first one, and then every year thereafter.

Mr. COOPER. Progress on this bill; so if it became apparent to Congress that some action should be taken, it would be in a better position to do so. I am very pleased that the Senator has offered this amendment.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. HANSEN. Mr. President, before that, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. HANSEN. Mr. President, I was just talking with a Member of Parliament from Israel. In discussing the proposed legislation before the Senate this afternoon, he observed that the nation of Israel had passed similar legislation some 8 years ago. He also observed that that legislation had never been enforced.

My question to the distinguished Senator from Maine is this: Am I correct that if the situation arose in time of war or in time of emergency when it was obvious that the para-

mount interest of the country would require that these standards be held in abeyance, when other concerns are of greater moment to us than the quality of the air under this legislation, does the President, or does someone in this country have the authority to suspend them for such time as may be required, in order to serve the paramount interest of the country?

Mr. MUSKIE. Congress has such authority, and only Congress.

Mr. HANSEN. Only Congress. The President does not have that authority.

Mr. MUSKIE. No.

Mr. HANSEN. I thank my distinguished colleague.

The PRESIDING OFFICER (Mr. GURNEY). The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

Mr. BOGGS. Mr. President, on behalf of the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that a statement by him in support of S. 4358, the bill now pending before the Senate, be printed in the RECORD.

There being no objection, Senator Scott's statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR SCOTT

Mr. President, I want to congratulate Senator Randolph and the members of the Public Works Committee on the excellent bill they have reported to us. S. 4358 represents the combined input of the Administration, both Houses of Congress and numerous concerned groups from the national community. I note with pleasure that many of the provisions of President Nixon's S. 3466, Amendments to the Clean Air Act, which I had the pleasure to work on and introduce, have been included in the Committee version. This legislation represents the highest form of nonpartisan political cooperation. Senators from both sides of the aisle took an active personal interest in developing the strongest possible air pollution control legislation. The bill before us represents a dynamic and aggressive assault on our national air pollution problems.

Every year, 200 million tons of contaminants are spilled into the air. The presence

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of these contaminants is not only dangerous from a health point of view, but it is also extremely costly in terms of economic damage to clothing, buildings, plant life and animal life. Unless this outpouring of contaminants is controlled, scientists tell us we may very well experience irreversible atmospheric and climatic changes capable of producing a snowballing adverse effect to the health and safety of our citizens. Four aspects of this bill are worthy of special note. They would accomplish:

1. The implementation of a system of national ambient air quality standards to reduce at least ten major contaminants. These national ambient air quality standards should provide a minimum level of national air quality protection. Along with national air quality goals and standards for newly constructed sources of pollution, the Secretary of HEW has the authority to enforce a cleaner air standard.

2. The "Hazardous Substances" provision gives the Secretary of HEW the authority to prohibit emissions of those substances having an adverse effect on the health of the surrounding community.

3. Automobile emissions comprise nearly 50 percent of our national air pollution control problem. By 1975, subject to possible delay of one year, the automobile industry will have to meet certain emission standards. This provision is tough, but necessary if we are to make a serious impact on our air pollution control problems.

4. The bill establishes a novel concept of public participation in the environmental enforcement process. The citizens suits authorized in the legislation will guarantee that public officials are making good on our national commitment to provide meaningful environmental protection.

Mr. President. No discussion of the environment would be complete if I were not to pay a special tribute to the Ranking Minority member of the Sub-committee on Air and Water Pollution, the distinguished Senator from Delaware, Mr. Boggs. Few men in this chamber have contributed as much to the betterment of our environment than the Senator from Delaware. His efforts, together with those of the Chairman of the Sub-committee, Mr. Muskie, and all members, both Republican and Democrat, are reflected in this meaningful piece of legislation.

In 1947, a rare air inversion over the town of Donora, Pennsylvania, trapped emissions from industrial plants in the Pittsburgh area. A lethal cloud of contaminants suffocated Donora for five days. During this period of time, over twenty people died and hundreds

of others experienced severe respiratory problems. To guarantee that future generations of Americans can live without fear of the destruction of the very air they breathe, I urge immediate passage.

Mr. GRIFFIN. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. GRIFFIN. The Senator from Nebraska (Mr. HRUSKA) could not be here this afternoon, but he was very much concerned and wanted an indication of his concern reflected in this debate, regarding the provision in this bill authorizing certain class actions against the Secretary of Health, Education, and Welfare, or a manufacturer, in the event of noncompliance.

As a member of the Committee on the Judiciary, it is disturbing to me that this far-reaching provision was included in the bill without any testimony from the Judicial Conference, the Department of Justice, or the Office of Budget and Management concerning the possible impact this might have on the Federal judiciary.

No hearings were held. Obviously, it is related to other legislation providing for class actions—legislation being considered now by the Commerce and Judiciary Committees.

It would seem to me, even if such actions were to be authorized, that it would have been more appropriate to allow them to be instituted at some later date, after a period of time had elapsed, after Congress had an opportunity by 1975 or 1976 to see whether these standards could be met.

But to write such a provision into this bill now, without any idea of what it means—especially in terms of our judicial system—seems very unfortunate.

The Senator from Nebraska (Mr. HRUSKA), the ranking member of the Judiciary Committee, wanted that concern expressed. I certainly share it.

I yield now to the Senator from Kentucky.

Mr. COOK. Mr. President, I am very much concerned about this, as a member of both the Commerce and Judiciary Committees. I suggested at a much earlier date that we conceivably in the respective committees could get together and make a pattern for class actions.

I want the Senate to understand that we are now taking up in the Judiciary Committee a suit in the District of Columbia that, it is contended, could possibly include as many as 117 million plaintiffs. There is presently a suit in New York with 3,750,000 plaintiffs. There was a settlement made in a case, not too long ago, which was a class action, which was settled for a sum of approximately $135 million, and the judge in writing his opinion suggested acceptance of this for some 70,000 or 80,000 plaintiffs, stating that they should accept this settlement because the chances of their recovery on a trial were 50–50, if not less.

I would only say to the Senator that I am glad he brought this up. I am very much concerned about this discussion of a plaintiff being able to bring an action which he himself—and members like him—seeks, but he knows not whether anyone else has been damaged in any way, shape, or form. Yet, we set ourselves up here in a position to make it more convenient to settle a case than to try it on its own merits because of the overall estimated cost of a trial.

I repeat, I am glad the Senator brought up that point, because we have been struggling between the Commerce and Judiciary Committees for many weeks in an effort to bring up a motion for a class action suit.

I am sorry that we did not have an opportunity to sit down with the Pub-

lic Works Committee and come up with basic standards for all class action suits that would be, at least, legally sanctioned by Congress. Suffice it to say that I am glad the Senator brought it up and that these remarks are in the RECORD.

Mr. GRIFFIN. Mr. President, as in the case of Senators, the various interested agencies could not learn about some provisions of this bill until a text was finally available on Monday of this week.

Mr. MUSKIE. Mr. President, let me say in response that first, there were hearings. This provision was included in legislation introduced last winter. There was considerable testimony. We have here, for instance, the testimony of Governor Sargent of Massachusetts, endorsing it.

We have the testimony of Paul Treusch, President of the Federal Bar Association, endorsing it. We have the testimony of Douglas Head, the Republican Attorney General of the State of Minnesota, endorsing it. We have Prof. James Jeans of the American Trial Lawyers Association, endorsing it.

Furthermore, this is not a class action provision. I suggest that Senators read it.

Senate bill 3201, to which comparison was made by the Senator from Nebraska (Mr. HRUSKA) on yesterday, in a class action bill. S. 4358 is not. S. 4358 is limited to citizens acting on their own behalf.

Senate bill 3201 provides damages and a remedy for recovery of fines and restitution, and other monetary damages. The pending bill is limited to seek abatement of violation of standards established administratively under the act, and expressly excludes damage actions.

Senate bill 3201 provides for redress of consumer injury. The pending bill is limited to an action for enforcement on abatement of violations of administratively set standards.

Mr. President, I ask unanimous consent to have printed in the RECORD two staff memoranda prepared for me in response to the comments yesterday of the Senator from Nebraska (Mr. HRUSKA).

There being no objection, the memorandums were ordered to be printed in the RECORD, as follows:

MEMORANDUM

1. The Administrative Procedure Act provides that reviewing courts "shall . . . compel agency action unlawfully withheld." The concept of compelling bureaucratic agencies to carry out their duties is integral to democratic society. Senator Hruska mentioned yesterday an example of where an administrative agency failed to act. The concept in the bill is that administrative failure should not frustrate public policy and that citizens should have the right to seek enforcement where administrative agencies fail.

2. Extracts from the hearing record on the citizen suit provision:

a. Governor Sargent, Republican Governor of Massachusetts, speaking on behalf of the National Governors Conference in response to a question if he supported the concept. Governor Sargent replied as follows: "Yes, I do. As a matter of fact, in my message to the legislature this year, I proposed a bill of rights which would give to the citizens of our State the right to clean air, the right to waters that are not contaminated, and the opportunity to take legal action if legal action is called for."

b. Paul Treusch, President of the Federal Bar Association "Section 4, by adding Section 108(c)(13), authorizes suits for private enforcement of air quality standards, implementation plans, and emission standards established under this section. We are very much in favor of this provision. Not only will this provision help establish a distinct public attitude of participation in the quality of our environment, it will give the public a problem-resolving tool to protect and enhance air quality."

c. Douglas Head, Republican Attorney

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General, State of Minnesota "The provision for private civil suits would be supported, I believe, by a large number of attorneys general with the caveat . . .

"The one danger that we can see from the men that I have talked with is the multi-

plicity of suits that would override compliance agreement already entered into by the Pollution Control Agency so that I believe that citizens should be very carefully correlated with the present enforcement provision so that we do not unnecessarily duplicate the enforcement of the law and that we do not unnecessarily clog up the courts where we are in fact making very swift efforts to enforce." The provision as currently drafted affords these protections.

d. Professor James Jeans for the American Trial Lawyers Association ". . . but we do want to commend the authors of the bill for the recognition of the value of private actions in a democratic society."

3. The fact that (a) citizens will be enforcing the same standards as administrative agencies, (b) notices are required to administrative agencies prior to bringing of an enforcement by citizens, and (c) clear discretion of the court to consolidate actions will avoid multiplicity of suits.

4. The provision on the award of cost litigation is intended by the Committee, as it is stated in the report, to provide a mechanism for the courts to avoid frivolous and harassing litigation by permitting the courts to award costs to defendants when plaintiffs seek only harassment.

5. The provision in the bill S. 4358 providing for citizen suits bears little resemblance to the provision mentioned by Senator Hruska in the bill S. 3201.

a. S. 3201 provides for class action, such class required to meet the complex and difficult requirements of Rule 23 of the Federal Rules of Civil Procedures. S. 4358 is limited to citizens acting on their own behalf.

b. S. 3201 is designed to provide a damages remedy for recovery of fines, restitution and other monetary damages. S. 4358 is limited to seeking abatement of violations of standards established administratively under the Act and expressly excludes damage actions.

c. S. 3201 provides for redress of consumer inquiry. S. 4358 is limited to an action for enforcement or abatement of a violation of an administratively set standard.

6. Citizen enforcement may add to the burden of the courts—but in a democracy, the answer cannot lie in the denial of citizen access to the courts—In a society of Government of and by the people we foreclose participation by citizens at our peril. The provision is directed at providing citizen enforcement when administrative bureaucracies fail to act.

7. Time for establishment of enforceable standards is at a maximum twelve months away and it will be considerably more time before many administrative standards are eligible for enforcement—so any impact on the courts is in effect postponed until the courts will have the additional judges mentioned by Senator Hruska.

8. The Council on Environmental Quality, chaired by Russell Train, has established a Legal Advisory Committee to assist the Council. The Committee's chairman is Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, and it includes many others. I ask unanimous consent that the membership of the Committee be inserted at this point in the record.

Malcolm Baldwin, Esq., senior legal associate, the Conservation Foundation, Washington, D.C.; William T. Coleman, Esq., Dilworth, Paxson, Kalish and Levy, Philadelphia, Pa.; Prof. David Currie, University of Chicago Law School and coordinator for Environmental Quality to the Governor of Illinois; Prof. Frank P. Grad, director, Legislative Drafting Service, Columbia Law School; Roger P. Hansen, executive director, Rocky Mountain Center on Environment, Denver, Colo.; A. Wesley Hodge, Esq., Hodge, Hills and Dahlgren, Seattle, Wash.; Prof. Louis Jaffe, Harvard Law School; William F. Kennedy, Esq., corporate counsel, General Electric Co.; Nicholas Robinson, chairman, Environmental Law Council, Columbia Law School; Prof. Ann Strong, director, Institute for Environmental Studies, University of Pennsylvania; Prof. Joseph Sax, University of Michigan Law School; David Sive, Esq., Winer, Neuberger and Sive, New York City.

The Advisory Committee last week passed the following resolution on citizen participation in the courts:

It is the sense of the Advisory Committee that: Private litigation before courts and administrative agencies has been and will continue to be an important environmental protection technique supplementing and reinforcing government environmental protection programs.

ARGUMENTS ON CITIZEN SUITS

1. The citizen suit provision is new to members of the Senate and has not had adequate hearing.

A similar provision was included in S. 3546 as introduced, and substantial testimony from citizens' groups supported it as a key provision in this year's air pollution legislation.

2. This provision would encourage frivolous or harassing suits against industries and government agencies.

The bill provides no action for damages, only for the abatement of violation of standards, which are public policy. Expressly for the purpose of limiting harassing or frivolous suits, the bill provides that the court may award the costs of litigation, including reasonable attorney and expert witness, to either

party as the public interest requires. The court would surely award costs to the defendant, a potentially expensive risk for the plaintiff, where the litigation was obviously harassing or frivolous.

3. A citizen suit provision is based on the assumption that the Federal and State agencies will be incompetent, corrupt or otherwise not discharge their responsibilities.

Citizens in bringing such actions are performing a public service. The limited resources of many State enforcement agencies, bearing the first line of responsibility under this bill, will be fully extended. This provision, requiring 30 days notice to State and Federal agencies, in which they may initiate abatement proceedings, will allow many violations to come to their attention which might otherwise escape notice. The only exceptions to this 30 day period for administrative action come for hazardous emissions or those of which the Secretary can be assumed to already have noticed.

4. Authorizing citizens actions against polluters and government agencies would burden already clogged courts.

A great number of these actions would come to the courts anyway, even if vigorously pursued by administrative agencies. Enforcement of an order to abate must be obtained in the courts, whether an agency or a private citizen initiates action. But more importantly, should the granting and protection of a right to clean air rooted in public policy be limited to what the courts can comfortably handle? We must legislate to protect the public health, then strengthen our court system as appears necessary.

5. The courts do not have the competence to handle the issues in air pollution control actions, and sending such actions there rather than confining them to expert administrative agencies, delays and confuses enforcement.

Enforcement of air pollution standards and regulations is not a technical matter beyond the competence of courts. This provision merely asks the court to do what it does best: a fact finding job as to violations of a definite numerical standard. If a violation is found, a judicial remedy is fashioned as indicated above, citizen enforcement would not disrupt administrative enforcement, but would reinforce and extend it. Standards would be the same under either mode.

Mr. MUSKIE. Mr. President, we are talking, gentlemen, about apples and pears. What we are talking about here is a judicial way for citizens to enforce the provisions of this act.

May I make another point about it, that before any citizen can bring an action, he is required to notify the enforcement agency concerned of his intent to do so, and the specific, alleged violation which he has in mind. In other words, the idea is to use citizens to trigger the enforcement mechanism. If that enforcement mechanism does not respond, then the citizen has his right to go to court. This is a much more limited application of the concept of citizen access to the courts than anything that has been discussed by the Senator from Nebraska (Mr. HRUSKA) or the Senator from Kentucky (Mr. COOK).

Mr. COOK. Mr. President, I merely brought this up in regard to the remarks of the Senator from Michigan (Mr. GRIFFIN), because I felt that it would be a good opportunity to do so. I am sorry that that opportunity has passed. I felt it was a good opportunity when I first suggested it, that we might change the uniform standards for class actions because the call for class actions was in the language, regardless of the amount in controversy, or the citizenship of the parties, which is in the language on page 83, lines 18 and 19, which constitutes, in essence, a class action. I felt that uniformity of language for class actions for this bill, and S. 3201, would be a good step forward in the name of uniformity.

Mr. MUSKIE. This does not require as class actions do, identification of the class or group before a suit is brought in the name of a class. This can be brought by an individual citizen. The court has authority to consolidate actions that might be taken by individual citizens.

Mr. COOK. May I say that the opportunity for the court to consolidate actions has been a part of Federal rules of procedure for a long, long time. That is already in existence.

Mr. MUSKIE. I understand. But the important distinction I want to make, if it is one—and I am told that

it is—is that it is not necessary for a citizen to take advantage of this right to establish himself as a member of a class. He can bring suit as an individual citizen under this provision.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. RANDOLPH. Mr. President, the Senator from Maine mentioned several individuals who appeared at the hearings on that occasion. I would like the RECORD to reflect that one of the gentlemen was Stanley Preiser, of West Virginia, who is recognized as one of the finest trial lawyers not only in our State but also in the Nation.

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Mr. GRIFFIN. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 3 minutes.

Mr. GRIFFIN. Mr. President, I understand now that hearings were held around a year ago—and I stand corrected. I was mistaken.

Mr. MUSKIE. They were held on March 23 of this year, and not a year ago.

Mr. GRIFFIN. But, in spite of the impact upon the Federal courts, it is still true, I take it, that the views of the Justice Department and the views of the Bureau of the Budget was not requested.

Mr. MUSKIE. This is part of every bill. Administrative agencies are asked to report. This provision is in the legislation introduced. If these departments did not report on the matter, it is not my responsibility. It is theirs.

Mr. GRIFFIN. Mr. President, I wanted to make the point that this is a matter which is very much within the interest of the jurisdiction of the Judiciary Committee. I do stand corrected on the point that some hearings were held.

Mr. COOK. Mr. President, will the Senator yield 1 minute to me?

Mr. MUSKIE. Mr. President, I yield 1 additional minute to the Senator from Kentucky.

Mr. COOK. Mr. President, I state to the Senator from West Virginia that I am delighted that Mr. Preisor testified. Mr. Preisor and I went to law school together. He is a fine and distinguished lawyer.

I say again to the Senator from Maine that I merely brought this up for the RECORD. Page 84, lines 9 and 10 state:

Nothing in this section shall affect the right of such persons as a class or as individuals—

That is plural. It is not as an individual, but as individuals who would constitute a class.

I merely set this out for the legislative record.

I say this to again emphasize that I think they are discussing and indicating a class action.

In this instance there is no jurisdictional amount in the bill. Therefore, the limit of authority is the $10,000 amount to get into the Federal courts.

I merely say that S. 3201 is the same. It allows anyone to bring suit in Federal court on the basis of $10 or more. But we are writing new authority and a new cause of action in the Federal court and not placing a jurisdictional amount on it.

I might say that I have no objection except that I think in the future we will eliminate all jurisdictional amounts in Federal court and we had better be ready to appoint a whale of a lot more Federal judges.

Mr. MUSKIE. Mr. President, I read from page 83, lines 24 and 25 of the bill. It states that such actions "may be brought by one or more persons on their own behalf."

Mr. HART. Mr. President, will the Senator yield?

Mr. MUSKIE. Mr. President, I yield 2 minutes to the Senator from Michigan.

Mr. HART. Mr. President, I would like to address myself at this time to section 304 of S. 4358, the citizen suit provision of the bill. I regard this provision as one of the most attractive features of the bill and am therefore disturbed by criticism of it which has been offered both within and without this Chamber.

The basic argument for the provision is plain: namely, that Government simply is not equipped to take court action against the numerous violations of legislation of this type which are likely to occur. In testifying on a similar bill before the Senate Subcommittee on Energy, Natural Resources and the Environment, former Attorney General Ramsey Clark spoke convincingly of this inevitable incapability. Mr. Clark stated:

> It will be impossible for government enforcement to control all significant acts of pollution. . . . The extension of private right, . . . and effective sanctions for the persons directly affected or concerned will be essential if vital interests are to be protested. Our experience in areas of massive unlawful racial discrimination, such as in schooling, employment, and housing tells us that however hard it might try, government will never have the manpower, the techniques, or the awareness necessary to enforce the law for all. Private enforcement of those laws is the only way the individual can be assured that the rights cannot be violated with impunity.
>
> Pollution control is another such area. If we are really serious about controlling the quality of our environment before it destroys the quality of our lives, we must give the individuals affected by, or concerned about pollutions in his life, the power to stop them through legal process.
>
> Far from risking an undue or inhibiting interference with Government enforcement, it will provide powerful supplementary enforcement. . . . and an effective and desirable prod to officials to do their duty.

It has been argued, however, that conferring additional rights on the citizen may burden the courts unduly. I would argue that the citizen suit provision of S. 4358 has been carefully drafted to prevent this consequence from arising. First of all, it should be noted that the bill makes no provision for damages to the individual. It therefore provides no incentives to suit other than to protect the health and welfare of those suing and others similarly situated. It will be the rare, rather than the ordinary, person, I suspect, who, with no hope of financial gain and the very real prospect of financial loss, will initiate court action under this bill. For the most part, only in the case where there is a crying need for action in fact be likely. In such cases, I would argue that action must be in the public interest.

The bill also provides for a notice requirement to State and Federal pollution agencies prior to the bringing of suit. This requirement, it is expected, will have the effect of prodding these agencies to act. In many cases, it is hoped, they will be able to act without resorting to the courts.

Even if litigation is in fact expanded under this bill, it must still be contended that such expansion is justifiable. As Ramsey Clark also stated at the hearings previously referred to:

> There is no question that justice is denied in America because it is delayed and court backlogs are a serious problem for society from every standpoint. But society has to have priorities and survival should be a pretty high priority. Survival depends upon the protection of our environment, and I think legal redress in America will be a major method of protecting that environment. The imposition of any additional caseload that might follow from this bill on the courts is one that it must gladly assume.

It may be that our judicial system must be expanded to provide for this caseload. Or it may be, as Mr. Clark states, that we may have to adjust

the priorities within that system. The time perhaps has come to take major action to compel that adjustment. It is in part for that reason that some have suggested the elimination of threshold procedural defenses that consume a court's time en route to its examination of the merits of cases. And it is in part for that reason that some have suggested an end to the fault principle that monopolizes so much time in automobile accident litigation.

It has been argued that even if the courts can meet the burden of cases arising under this bill, defendants may be unduly harassed by frivolous suits which may be brought. The bill defends this criticism by providing that the court "may award costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines such action is in the public interest." Given the escalating costs of attorneys fees today, I find it difficult to imagine that many will engage in the frivolity which appears so worrisome to some.

Yesterday, the distinguished Senator from Nebraska (Mr. HRUSKA) referred to Chief Justice Burger's remarks about the dangers inherent in providing additional rights of action enforceable in Federal courts.

I am aware of the Chief Justice's caution in this area, and I believe it to be soundly based. However, I would remind my colleagues of another cautionary remark to which he referred in one of his opinions, namely, *Office of Communication of United Church of Christ* v. *FCC*, 359 F. 2d 994 (1966). In that opinion referring to the right of citizens to appear before the FCC, he cited with approval a statement of the late Edmond Cahn, which reads:

> Some consumers need bread; others need Shakespeare; others need their rightful place in the national society—what they all need is processors of law who will consider the people's needs more significant than administrative convenience.

It is my hope that both we and those administering our judicial system will take heed of that advice and continue to be guided by it.

Mr. President, I was off the floor when the Senator from Kentucky made his remarks and I may not be responding to what was said.

I would make this point, however, relative to the specific issue now before the Senate.

In legislation of this type, we will find very likely noncompliance which in number or degree are far beyond the capacity of the Government to respond to. This is one of the frustrations.

We do not have to serve on commissions such as the Commission on Civil Disorders or Violence or anything else to know that one of the frustrations across

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this country is the increasing number of our citizens who feel that Congress has made them a promise, but that there are no means of obtaining delivery on that promise.

The burden on the Department of Justice is so great that the agency cannot respond to it. To allow the citizen the right to sue on his own behalf may indeed increase the burden on the Federal courts. But this is not an adequate response to the frustrated citizen who seeks that right.

Our obligation, I feel, is to bear that burden by expanding the capacity of the court system to respond to the frustrated citizen.

Mr. MATHIAS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 62, after line 22, insert:

"(d) The Secretary shall publish in the Federal Register the results of each of his tests of vehicles and vehicle engines under this section, as promptly as possible and at least every six months, in such nontechnical manner as will reasonably disclose to prospective purchasers (at retail) of new motor vehicles and new motor vehicle engines the comparative performance of the vehicle and engines tested in meeting the air pollution emission standards required by the regulations prescribed under section 202 of this Act."

Mr. MATHIAS. Mr. President, this is an amendment which would require that every 6 months the Secretary publish automobile pollutant emission levels which have been determined for the various makes and models of cars in the Federal Register.

It makes it possible, therefore, for the public to actively participate in the program for purity and cleaner air by purchasing the cars which are in greatest compliance with the purpose of this act.

Mr. MUSKIE. Mr. President, on the face of the amendment, it is perfectly consistent with the objectives of the bill and the desire to make the performance standards understandable to the public.

I want to indicate to the Senator from Maryland that I am willing to take the amendment to conference, if the Senate approves, with the further understanding that if there are problems as we evaluate the matter, I will take them up with the Senate and with the conferees.

Mr. MATHIAS. Mr. President, I thank the Senator from Maine.

Mr. MUSKIE. Mr. President, I yield back the remainder of my time.

Mr. MATHIAS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland.

The amendment was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Committee on Public Works be discharged from further consideration of H.R. 17255.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 17255.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 17255) to amend the Clean Air Act and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the bill.

Mr. MUSKIE. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the text of S. 4358, as amended, be substituted.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. MUSKIE. Mr. President, I ask for the yeas and nays on passage

The yeas and nays were ordered.

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NATIONAL AIR QUALITY STANDARDS ACT OF 1970

The Senate continued with the consideration of the bill (S. 4358) to amend the Clean Air Act, and for other purposes.

Mr. GRIFFIN. Mr. President, yesterday the Senator from Maine (Mr. MUSKIE) quoted a paragraph from a letter written by Mr. E. N. Cole. I believe the Senator used the paragraph out of context to support an argument diametrically opposite to the burden of the entire letter.

A copy of the letter was sent to me and to other Senators. I ask unanimous consent that the complete text the letter be printed in the RECORD, as follows:

GENERAL MOTORS CORP.,
Detroit, September 17, 1970.

HON. EDMUND S. MUSKIE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MUSKIE: I was distressed to learn that the Senate Public Works Committee has voted approval of an air pollution bill which would require that 1975 model cars have a 90 per cent reduction in emissions from 1970 levels.

As you may recall, in our meeting August 25 I stated that General Motors does not at this time know how to get production vehicles down to the emission levels that your bill would require for 1975 models. Accomplishment of these goals, as far as we now know, simply is not technologically possible within the time frame required.

Many persons appear to have the impression that your bill seeks to clean up 90 per cent of auto emissions. Instead, the bill actually would require more extreme reductions. Specifically, your bill requires reductions 90 per cent below the low levels already achieved as of 1970. As a result, the following reductions would be required, compared to 1960 pre-control levels: hydrocarbons, 98%; carbon monoxide, 97.5%. As to nitrogen oxides and particulates we would be required to reduce them 90% each within five years after publication of health criteria for them. Moreover, we would have to achieve even greater reductions than these for the various emissions, as the bill requires us to warrant that every car we build remains within the standards for 50,000 miles. Our ability to achieve the required particulates reduction would depend absolutely on the availability of unleaded fuel.

My purpose in writing to you is to emphasize as strongly as possible that General Motors presently does not have the technological capability to make 1975 model production vehicles that would achieve emission levels the legislation requires. We are aware that there has been a reluctance among some in Washington to accept this statement.

General Motors has committed itself publicly to eliminating the automobile's part of the pollution problem at the earliest possible date. We are making good progress toward that goal. Some of the experimental engines and control systems in our Research Laboratories have achieved very low emissions under laboratory conditions. This experimental hardware has encouraged us to believe that we will be able to meet the federal government's proposed 1975 standards, which would result in reductions of 95% and 86% in hydrocarbons and carbon monoxide, respectively, compared to pre-control vehicles.

Remarkable low emissions can be achieved with experimental laboratory cars without any regard to mass production manufacturing tolerances, durability, maintenance, cost, and conditions of customer use. It is quite another thing to engineer control systems that can be mass-produced and operated under all conditions, and still meet stringent standards over the lifetime of the vehicle, as would be required by the warranty provisions.

The legislation, in effect, is asking the automobile industry to mass-produce systems developed through space age technology. There is a distinct difference between hand-building one moon rocket at a time and the requirement that your legislation would impose—manufacturing millions of units that would have the same close tolerances that space hardware demands.

I urge you to consider amending the legislation to give the Secretary of Health, Education, and Welfare authority to determine administratively (1) the air quality needs to meet health requirements and (2) whether the technology exists to permit the mass production of long-lived automotive control systems which would perform at this level.

In view of the great interest of members of Congress and the public in this important matter, I am taking the liberty of sending copies of this letter to others who are vitally concerned, as you are, with this subject.

Sincerely,

E. N. COLE.

Mr. COOPER. Mr. President, in connection with the discussion of the section on class action, I ask unanimous consent to have printed in the RECORD an article written by Mr. Joseph Thebodeaus, who I understand is legal adviser to the Governor of Michigan.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MICHIGAN'S ENVIRONMENTAL PROTECTION ACT OF 1970: PANACEA OF PANDORA'S BOX

I. INTRODUCTION

Michigan House Bill 3055[1] is the most revolutionary—almost radical—measure to have been enacted in the burgeoning field of environmental law. It creates in every person and entity, irrespective of standing or injury, the right to sue any person or entity for the protection of the environment. First introduced in the Michigan House on April 1, 1969, it was labeled "an April fool joke". Little more than a year later, on "Earth Day", April 22, 1970, it emerged from the House. It passed the Senate on June 26, 1970, and was signed by Governor William G. Milliken

Footnotes at end of article.

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on July 27, 1970. It will become effective October 1, 1970.

Professor Joseph L. Sax[2] had been retained by the West Michigan Environmental Action Council[3] to draft the bill. Just how and by whom the decision was made to introduce it on the House side only, through a low-profile member of that body, and under lone Democratic sponsorship into a legislative structure of which Republicans controlled both the Senate and Governor's office, is now left only for conjecture.[4] Any detriment which might have come about as a result of that decision, however, never materialized. Rabid public reaction, aided and abetted by political grandstanding, incident to 3055's passage overcame all obstacles.

The bill owes its enactment to that reaction. The sex appeal of the "environmental crisis" peaked shortly after the bill's introduction. Introduced at any other time, it never would have been the subject of even one committee hearing; introduced when it was, members of the Michigan House were standing in line to have their names appended as co-sponsors. As the legislative process unfolded, it became obvious that anything with a "3055" label would have been passed and signed. This is a classic story of a notion whose time was ripe.

As introduced, and to a lesser extent as passed, 3055 had and has potential problems. At best, it may clog the circuit courts in Michigan for some time; at worst, it threatens to throw them into chaotic disrepair. Moreover, it could hopelessly confuse substantive legal principles of public nuisance, environmental and administrative law.

Governor Milliken was confronted with the dilemma of wanting to support the bill's concept, while having serious reservations about the form and operative effect of some of its provisions. But suggestions for constructive change were not warmly received. In addition to the ordinary inertia which accompanies any attempt at change, several factors surrounding 3055, but totally unrelated to its merits, exacerbated the difficulty.

First, the bill had only Democratic sponsorship. Accordingly, the Governor's support was somewhat suspect.

Second, owing to its sex appeal, and owing to typical knee-jerk "boobus americanus" reaction, 3055 readily assembled a sizeable lay following which generated great pressure in behalf of something, about which it had little or no substantive knowledge. Who, in 1970, could be against the environment? Who, in 1970, could favor pollution? Support was for the measure as introduced, period, without any changes, irrespective of their merits. Either you supported the measure completely, or you were against it completely. The Governor's public posture in attempting to effect constructive change was, therefore, extremely precarious.

Third, from the perspective of legal and technical competence prerequisite to grasping some of the intricacies of the bill, the House Committee on Conservation and Recreation, to whom it was assigned, was lacking.[5]

Fourth, suspicious of support from the Governor's office, reveling in the great attention given the bill and thus to his committee, and convinced that the proposal of any amendment was an attempt to emasculate the measure, the committee chairman took an intractable position that no amendment would be appended in his committee.[6]

Finally, into the consideration of this intricate and complex bill was injected the debilitating influence of party politics in an election year.

These factors would have considerable impact on the direction and legislative intent of 3055.

Footnotes at end of article.

It was with some diffidence, then, that on March 18, 1970, the House Conservation and

Recreation Committee hearing was approached with sixteen pages of analysis and suggested amendments to the bill in hand. Apprehension was particularly high since it was known that the design of the "hearing" was to rubber-stamp the Sax version, report it out, and ram it through. Thus, with some skepticism, if not trepidation, the Governor's representative opened his remarks to the committee:

"It should first be noted that the Governor supports this bill in concept. It is only for the purpose of attempting to help in insuring its effectiveness and making it a workable piece of legislation that I am here today. Workable from the private citizens' point of view; from the public administrative agencies' points of view; and most of all workable from the courts' point of view. For it will be, in the final analysis, the courts which will bear the burden of 3055. They are the ones who will have the burden, not only in added caseload, but more importantly in the exercise of their judicial discretion.

"Accordingly, it is my initial observation that, to be workable, this bill must be workable in, for and by the courts. If they are left to drift in a morass of legal vagueries or ill-defined standards, or worse, no standards at all, within which to exercise their powers, then not only will this legislation be unworkable in and of itself, but it will have the more deleterious and long-range effect of impeding whatever progress, albeit inadequate, we are making in the effort to save our environment.[7] "

With those and other preliminary observations having been made, pertaining to the title of the bill, broadening the class of parties-plaintiff, and potential *res judicata* and estoppel problems incident to declaring all actions brought under the bill to be in the name of the "State," [8] several major problems with the Sax draft were singled out. To some extent these problems still exist. Others were corrected by amendment. Others, still, are inherent in the basic concept of the legislation.

For reference an appendix is provided. It contains a draft of Enrolled House Bill 3055 as signed by Governor Milliken on July 27, 1970,[8a] a draft of the bill as introduced on April 1, 1969, and the version of 3055 as introduced in Congress on March 10, 1970.[8b] The draft of the enrolled bill is printed with marginal numbering of each line. In the following pages, references to line numbers will be to this draft.

II. ANALYSIS

A. Constitutional basis

Though introduced in April, 1969, 3055 did not receive any attention until mid-January, 1970, when the House Conservation and Recreation Committee held its first of many public hearings. Paraphrased, the bill provides that:

"Any person or entity shall have the right to maintain an action for declaratory and equitable relief against any person or entity for the protection from pollution, impairment or destruction, of the air, water and other natural resources of the state."

In addition to its foundation in the general police power regulating the public health, safety and welfare, 3055 has a more specific constitutional basis in the Michigan Constitution of 1963:

"The conservation and development of the natural resources of the state are hereby declared to be a paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction." [9]

The operative language is the second sentence, a substantial part of which is incorporated verbatim into the bill.[10] That language has generated much of the controversy surrounding 3055; because of it, 3055, by design, lacks specificity in standard and definition. This is its great weakness.

While it may have sounded suspect to the overwhelmingly lay membership of the House committee to question language in a statute which had been taken virtually verbatim from the Michigan Constitution, it was argued that the same language, without qualification, had a different significance in the context of a statute. The fact that language is drawn verbatim from a constitutional provision, does not necessarily render it workable, or even constitutional, within the confines of a statute. Language as it appears in a constitution is not self-executing.[11] It is only a directive to the legislature, and, as such, contemplates further legislative action to implement it. In this instance, not only does the constitutional language specifically direct the legislature to implement the provision, but the pertinent minutes of the Constitutional Convention clearly reflect the intent that this language was not to be self-executing.[12] It is axiomatic that if constitutional language is not in and of itself self-executing, then the verbatim recitation of the same language in a statutory provision does not effect execution of the constitutional provision and does not, therefore, implement the provision.

Moreover, implementation of any constitutional language requires that it be done in accordance with due process, which implies guidelines or standards with which the statute itself and the constitutional provision can be effectively enforced. Accordingly, adoption by a statute of constitutional language, unqualified by guidelines or standards for enforcement, runs the risk of violating due process.[13]

This is true, irrespective of the fact that the courts, as a practical matter in the first instance, might find the unqualified language unworkable.

In particular, although drawn directly from Article 4, § 52, the terms "pollution, impairment and destruction" are relative. They are unrestrictive, unqualified, and undirective. As is noted above, to employ wide-open and ill-defined language in any statute is dangerous; to do so in one of such sweeping ramifications as 3055 could prove disastrous. To some extent each of us is polluting, impairing and destroying our air, water and other natural resources with each breath we take. Presumably, under the parameters of 3055 each of us could be enjoined from drawing another one.[14]

Prerequisite to further consideration of this, its most critical aspect, however, is some examination of the mechanics of 3055.

B. Operative sections

Section 1

Section 1 (lines 9 and 10) states the title of the act. Aside from the political gamesmanship reflected in the appearance in the title of the names of one Democratic House member and one Republican Senator, adoption of Section 1 was not accompanied by any great fanfare or controversy; nor is it of any great significance.

Section 2

Section 2(1), (lines 11 to 21) provides that:

"The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction."

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As introduced in April, 1969, section 2 was not as inclusive of parties-plaintiff as the enrolled bill reflects. It formerly included only "[t]he attorney general, a city, village or township or a citizen of the state. . . . " This technical change enables every person or entity, including the state or any agency, to sue any other person or entity, including the state or any agency, for the protection of the environment.

It is significant that the state and its agencies are susceptible to injunctive action under the bill. This reflects the increasingly accepted view, and motive behind 3055, that administrative agencies are not doing their job to protect and preserve natural resources. Proponents of the bill argued that these agencies, while entrusted with this responsibility, are not upholding it. It was the expressed intent of the House committee, therefore, that, not only would the polluter be susceptible to actions under the bill, but that the relevant regulatory body could also be subjected to the court's equitable and declaratory jurisdiction.

Section 2(2), (lines 22 to 29) signals this lack of confidence in administrative procedures:

"(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

"(a) Determine the validity, applicability and reasonableness of the standard.

"(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court."

The section was inserted in Senate committee, after House passage, and the House later concurred in the Senate amendment. But it could cause problems.

In particular, it has been suggested that section 2(2)(b) may be an unconstitutional delegation of legislative authority, and may violate the principle of separation of powers. It purports to give the courts the authority to write, not merely interpret, the law. Moreover, it enables the courts to superintend administrative prerogative. The Michigan Constitution of 1963 provides that:

'The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." [15]

To some extent the courts, especially activist courts, legislate now; perhaps rightly so, in some cases. But section 2(2)(b) gives more than tacit approval of, or recognition to, this fact. It writes it into law. Unquestionably, the branches of government must work together in a spirit and practice of cooperation.[16] It is also squarely within judicial prerogative, as provided in section 2(2)(a) to, "[d]etermine the validity, applicability and reasonableness of (a) standard." [17] But the courts cannot legislate. They cannot ". . . direct the adoption of a standard. . . ." [18]

"There is a distinction between legislative and judicial acts. The legislature makes the law—courts apply it. To enact laws is an exercise of legislative power; to interpret them

is an exercise of judicial power. To declare what the law shall be is legislative; to declare what it is or has been is judicial. The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed. The legislature prescribes rules for the future. The judiciary ascertains existing rights." [19]

Nor it is legally sufficient to reply that the legislature has vested the courts with authority to adopt appropriate standards. That begs the question and flies directly in the face of improper delegation of legislative authority:

Footnotes at end of article.

"In view of the recognized division of powers between the different departments of government any attempt to vest the courts with legislative authority would be invalid." [20]

And further:

"The power given to a court under the Constitution is judicial power. It is beyond the power of the legislature to take from it that judicial power, and it is equally beyond the authority of the legislature to confer upon it *power not judicial.*[21]"

Moreover, the delegation of rule making power, if possible in the first instance, is nonetheless invalid if it does not set forth standards or guidelines in connection therewith.[22] It might be argued that section 2(2)(b) is no more than an expression of the court's declaratory and equitable jurisdiction. That is, that to ". . . *direct the adoption of* a standard . . ." is no more than a logical extension of the court's equitable powers. This assumes, however, that the section is applicable, not as a general principle, but only as to each case on an ad hoc basis. But that assumption and interpretation does not track with the literal language which clearly has a much broader applicability. Furthermore, it was the legislative intent that it be a generally applicable principle.[23]

Section 2a (lines 30 to 34) authorizes the court, where it has ". . . reasonable ground to doubt [his] solvency" or ". . . [his] ability to pay any cost or judgment . . .", to require of the plaintiff the posting of a bond not to exceed $500.00. The section is designed to preclude the harassing suit or the action which is totally without merit.[24] The section itself is probably equally unmeritorious. Because of the nominal amount stipulated, any well-intentioned litigant will post it without difficulty. But if he is well-intentioned, then the posting of the bond is unnecessary. On the other hand, if the lawsuit is of an harassing, unmeritorious nature, the nominal bond will not preclude it. It can still be brought without great imposition. Further, the limit on amount is so small that it would not cover any substantial cost that might be invoked.

It would seem more sensible to simply have relied in this regard on the court's equity power. The suit need not be entertained at all. Moreover, in the exercise of its equity jurisdiction, the court can demand the posting *of a bond of any size, or any other condition.*

Likewise, in the exercise of that jurisdiction, it can award or apportion costs. Accordingly, it would seem that section 3(3) (lines 51 and 52) is also unnecessary.

In addition, as is noted below, if the court is in need of an escape hatch, section 3(2) (lines 48 to 50) provides it through the creation of the role of the master or referee whose findings and recommendations can serve as a basis for dismissal or other disposition of an *action, short of a full evidentiary hearing.*

Section 2a may, however, be more than just an unnecessary appendage. In setting a fixed maximum dollar limit on the bond which may be required, the section may similarly limit the court's otherwise unlimited equitable power to require a bond in any amount. By *singling out* a lesser power, the section may constrain the court's otherwise unbridled authority to do equity. This clearly was not the legislative intent. Quite the contrary, notwithstanding that the foregoing observations were made in committee, a representative moved from the House floor that the bond provision *be inserted so as to afford the courts authority* to prevent the harassing suit. Its effect may be just the opposite.

Section 3

Section 3(1) (lines 35 to 47) was the focal point of much debate, and appropriately so, for it is a key part of the bill. It reads:

"When *the plaintiff in the action has made* a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the *promotion* of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions *in the circuit courts shall apply to actions* brought under this act."

In short, it says that the plaintiff must first show a prima facie case of his right to relief.[25] If the defendant chooses to rebut that

showing by the presentation of some evidence, *the burden shifts back to the plaintiff.* In the alternative, the defendant may, " . . . by way of an affirmative defense . . .", prescind from the plaintiff's initial showing and assume the burden of showing that there is ". . . no feasible and prudent alternative . . ." to his conduct. If he takes the latter approach, the defendant must also show that his ". . . conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources. . . ." The section concludes that, except as to the "affirmative defense," the principles of burden of proof and weight of the evidence shall be the same for proceedings under 3055 as they are for all other civil actions in the circuit courts.[26]

As originally drafted, section 3(1) did not provide for the alternative defenses. Once the prima facie case had been shown, it placed the burden on the defendant throughout, and required much more of the defendant's proof. It simply stated that, once the plaintiff established his prima facie case:

"[t]he defendant has the burden of establishing that there is no feasible and prudent alternative and that the conduct, program or product at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction."

This may have been asking a bit much of the defendant, notwithstanding the arguments of the proponents of the language. They argued that in most, if not all, environmental lawsuits technological knowledge and expertise are exclusively with the defendant; that he is solely in a position of knowing whether an alternative method to his conduct does or does not exist, and that only he and his evidence can establish that fact.[27]

Thus, the original language was an indirect means of obtaining discovery—and more. Placing the entire burden of proof on the defendant effectively compelled him to come forward with the evidence—for or against himself. This is a complete reversal of common law jurisprudence and civil practice. While there is some merit to the proponents' rationale, the effect of this complete reversal is of questionable advisability. It at least prejudges the defendant's conduct, may be of questionable constitutionality (fifth amendment due process) and begs the question: Is the remedy under the Act a penalty? It is true that technological data is usually exclusively with the defendant. But discovery is available. The de-

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fendant should not have to prove the plaintiff's case. He should not have to prove the case against himself.

The language of the enrolled bill to some extent corrects this inequity. Instead of requiring the defendant, once a prima facie showing is made, to sustain the entire burden throughout, he is now afforded the option of simply rebutting that showing, or of going beyond and showing that these is ". . . no feasible and prudent alternative . . ." to his conduct. This is in contrast to the Sax draft, by the terms of which he was compelled to show ". . . no feasible and prudent alternative . . ." to his conduct. Under the enrolled bill, if the defendant does not raise the question of "feasible and prudent alternative", it need not be put in issue. In most cases, however, the defendant will ultimately see fit to litigate the question. But he need not, if he is able to overcome the plaintiff's case by way of a lesser showing. This change was made in House committee for the express purpose of alleviating the inequities inherent in the Sax draft.

Nevertheless, there is still a weakness in section 3(1). The terms "feasible and prudent" are left all alone and unqualified. What may be feasible and prudent in one instance, may not be in another. What may be feasible and prudent from one prospective may not be from another. There are technological, economic, geographical, physical, and other kinds of feasibility and prudence. It was argued—ultimately in vain, though for a time some converts were won—that these terms, like "pollution, impairment and destruction", are relative and in need of further definition.

For the short while (2 drafts) during which that argument met with some success, the language "considering all relevant surrounding circumstances and factors" was inserted to qualify "feasible and prudent alternative." It was later removed as the *quid pro quo* for the insertion of the term "unreasonable" to modify "pollution, impairment and destruction."[28]

Hopefully, the courts are still free to consider "all relevant surrounding circumstances and factors." But because of the constructive legislative intent, perhaps not. They certainly are not compelled to do so. Broad, and perhaps vague, as that language is, it might have afforded the courts paradoxically more latitude and more direction in a given instance. Now, presumably, a determination of feasibility and prudence could—and may have to—turn on a single factor to the exclusion of consideration of all others.

In the Sax draft, section 3(1) also required that the defendant's conduct be ". . . reasonably required for promotion of the public health, safety and welfare in light of the state's paramount concern for the protec-

tion of its natural resources from pollution, impairment or destruction . . ." Requiring that a particular endeavor of private enterprise be "reasonably required" by the public health, safety and welfare is totally unreasonable and disconsonant with basic human motivation and activity. People do not ordinarily do things because required by the public health, safety and welfare to do them. Their conduct may, and must, be "consistent with" these considerations.

But the test as originally drafted is a greater one than is exacted of public and nonprofit entities. If business were required to show that it is "reasonably required" by the public health, safety and welfare (let alone by "the protection of [the state's] natural resources") then it would be unable to justify its existence. The test was perhaps unconstitutional, totally unworkable, and, at least in total disregard of the ordinary course of business and the conduct of human affairs. In a word, it was academically idealistic and

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Footnotes at end of article.

practically unrealistic. As finalized in the enrolled bill, the test now is simply "consistent with" these considerations, and this would seem most satisfactory, necessary and sufficient.

Although not in the least bit controversial, section 3(2) (lines 48 to 50) has some significance. It provides for a master or referee to assist the court. Specifically, to the master or referee is delegated the responsibility of taking ". . . testimony and making a record and a report of his findings to the court in the action." It is the design of this section: to provide for a preliminary screening of actions; to weed out the unmeritorious action; to give the court some basis in fact for doing so, short of a full-blown hearing on the merits; and, in general, to provide the court with an informal precis of the case before or shortly after issue is joined.

Section 3(3) (lines 51 and 52) merely affirms what is inherent in the equitable powers of the court—to apportion costs as justice requires.

Section 4

Section 4(1) (lines 53 to 56) authorizes the court to grant temporary or permanent relief, or impose any conditions required, to protect the air, water and other natural resources.

Section 4(2) (lines 57 to 68) provides that, in doing so, the court may remit the whole matter to an appropriate administrative agency or agencies. There is sound authority for doing so:

"The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. 'Exhaustion' applies where a claim is cognizable in the first instance by the administrative agency alone; judicial interference is withheld until the administrative process has run its course. 'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. *General American Tank Car Corp. v. El Dorado Terminal Co.*, 308 U.S. 422, 433 (1939).

"No fixed formula exists for applying the doctrine of primary jurisdiction. In every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation. These reasons and purposes have often been given expression by this Court. In the earlier cases emphasis was laid on the desirable uniformity which would obtain if initially a specialized agency passed on certain types of administration questions. See *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426. More recently the expert and specialized knowledge of the agencies involved has been particularly stressed. See *Far East Conference* v. *United States*, 342 U.S. 570.[29]"

Proceedings at the administrative level are to be conducted pursuant to the Administrative Procedures Act of 1969,[30] and the court is to retain jurisdiction of the matter pending their completion. At that time, the court is to determine whether "adequate protection" has been afforded the air, water and other natural resources.

During debate in House committee, commercial and industrial interest lobbied strongly for mandatory, rather than discretionary remittance. They argued that somewhere there exists the opportunist on the bench who, for political reasons, will fail to remit a case which should be referred to the administrative level; that there is the judge who will seize upon the right case at the right time (just prior to his own reelection bid), short-circuit the administrative process and grandstand to the voters.

The conservationists argued, on the other hand and inconsistently with much of their rationale relating to other provisions of the bill, that to require referral would deprive the judge of discretion in the exercise of

his equitable powers. More importantly, they argued that to require referral of cases could preclude or stifle decisive action where needed in a given case. In addition, since the judge who voraciously seeks out more of a caseload than he already has is a rarity, (notwithstanding the political opportunist) it seems unlikely that the courts will be at all reluctant to preliminarily remit an appropriate case to the administrative proceedings. This is particularly true, since the court retains jurisdiction pending completion of the proceedings.

The last sentence of section 4(2) and the first sentence of section 4(3) (lines 65 to 71) contain the essence of the philosophy behind 3055. Those two sentences read:

"In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

"Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act."

In addition to affording immediate access to the courts, 3055 provides for immediate review of administrative actions. But it is the kind of judicial review that is significant. Ordinarily, the scope of review is limited to those cases where the administrative decision is:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedures resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.[31]

Direct review under 3055, however, is available irrespective of these considerations and of whether the agency followed established substantive rules, regulations or guidelines. The courts have always had authority to review administrative regulations, and the exercise of discretion thereunder, to protect constitutional rights.[32] But they have not had the authority to pass judgment upon the substantive content of a rule or regulation absent a showing of its unconstitutional operation. Absent a showing of one of the generally accepted bases for overturning administrative decisions, to arm the courts with override authority of the kind granted pursuant to section 4(3) (". . . adjudicate the impact of defendant's conduct . . .") comes perilously close to running afoul of the improper delegation and separation of powers principles noted above.[33]

"The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed.[34]"

Section 4(3), with its directive to the courts to override substantive administrative rules, regulations and guidelines, in adjudicating the effect of a defendant's conduct on the environment, is, by operation, legislating. Moreover, it does so with no provision for standards or guidelines. Needn't the defendant have promulgated notice of the standards which he must meet? Or can he, in lieu of being held accountable to specifically prescribed and promulgated rules and standards, be set adrift in the ill-defined

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morass of "pollution, impairment or destruction" and "reasonable requirements of the public health, safety and welfare"? The former would seem to be the rule.

"This court has been specially vigilant in the guardianship of personal and property rights as against uncontrolled delegation of the power to legislate and enforce at will. See the leading case of *Osius* v. *City of St. Clair Shores*, 334 Mich. 693, 698 (48 ALR2d 1079);

"There is no doubt that a legislative body may not delegate to another its lawmaking powers. It must promulgate, not abdicate. This is not to say, however, that a subordinate body or official may not be clothed with the authority to say when the law shall operate, or as to whom, or upon what occasion, provided, however, that the standards prescribed for guidance are as reasonably precise as the subject matter requires or permits.[35]' "

And acceptance of the rule is becoming widespread:

"There is growing recognition among the state courts of the healthy principle that a person who relies in good faith on an agency rule should be held harmless from loss if that rule is later held invalid, or is amended.[36]"

Section 4(4) is a technical override of section 64 of the Administrative Procedures Act of 1969[37] which, in conjunction with section 4, could permit the vesting of jurisdiction, upon review of the administrative proceedings, in a court other than that which first took cognizance of that matter. Section 4(4) insures that judicial review will be conducted by the court originally taking jurisdiction.

Section 5

Section 5(1) (lines 79 to 88) provides for intervention at both the administrative and judicial review levels. Its scope is as all-in-

clusive as is that of parties-plaintiff and defendant under section 2.

Section 5(2) (lines 89 to 95) purports to superimpose on the administrative agency the same directive as is given the court under section 4(3). That is, an override of duly established and promulgated agency standards and guidelines is provided. Accordingly, the analysis of section 4(3) is equally applicable to this section. The only distinction is that this section is expressly operative at the administrative level, (and arguably operative upon judicial review) whereas, section 4(3) is expressly operative upon judicial review.

Of the remaining sections 5(3) (lines 96 and 97), 6 (lines 98 and 99), and 7 (line 100), 5(3) is designed to prevent a multiplicity of suits by stating that the doctrines of *res judicata* and *estoppel* are applicable. It would be seem that, under its equitable power, the court could invoke them in any event.

Section 6 states that 3055 is supplementary to, not supplantive of, existing administrative procedure.

Section 7 provides the effective date of October 1, 1970.

III. IN RETROSPECT

A. Reasonable pollution?

References have been made to the lack of definition of terms and preciseness of language in 3055. With no small amount of effort were some of the Governor's proposed changes inserted and retained in the bill. Other changes were also made. Perhaps a sufficient number of constructive changes were effected to have constituted a decent average in most leagues.

But it will forever be a cause of great chagrin that the term "unreasonable" was stricken from the final draft after it reached the floor of the House.[38] The manner in which it was removed is likewise a source of concern and a sad commentary on legislative processes. The term was not used in the Sax draft. It was inserted in House committee. As has been noted, the qualifying language relating to "feasible and prudent alternative" had been deleted by agreement of all concerned in exchange for retaining "unreasonable".[39]

Footnotes at end of article.

Nonetheless, one Democratic Representative, who, as chairman of the House committee, had been privy to all drafting sessions, moved, as the bill was reported from committee onto the calendar, that "unreasonable" be stricken. He had rallied the number of his Democratic colleagues sufficient to obtain the necessary minimum 56 votes and the word was excised.[40] Enough attention was thereby focused on it that any attempt to reinsert the word would have been an exercise in futility. Public reaction, without understanding the full significance of the term and spurred by conservations paranoia,[41] misguidedly brought sufficient pressure to bear to keep it out.

Thus, whereas an agreement had been made by all principals involved, one questionably motivated act undid it all. Whereas a fairly sound model had been prepared, the measure may now be of questionable constitutionality for lack of definition.

"[A]ny statute which subjects those who violate its terms to criminal prosecution or to an action for damages must give [sufficiently definite] notice. Even a statute subjecting violators merely to injunction or to deprivation of a prospective gain should give notice where the secondary effect of such a sanction is to destroy the value of an existing investment of time or money."[42]

In any event the courts are now deprived of any handle, which they might otherwise have had, upon which to rationally, and with precedent, decide the matters which come before them under the act.

This is particularly true, since, in reviewing cases pursuant to 3055, the courts are directed to prescind from administrative rules, regulations, guidelines, standards and actions.[43] As such, they have no criteria upon which to base their decisions. The terms "pollution, impairment and destruction" are in desperate need of qualification. It was strongly felt that the term "unreasonable" afforded the semblance of definition.

The action of once having expressly inserted the word "unreasonable" in the bill and subsequently removing it, may give rise to a constructive legislative intent that the courts are to regard "pollution, impairment and destruction" in the absolute; that, notwithstanding their broad equity powers, they are precluded from adopting a "rule of reason."

Is there such a thing as reasonable pollution? The conservationists and the chairman of the House committee answered, "No." It can only be hoped—for the sake of plaintiffs, defendants, commerce, industry, the courts and all of us—that, notwithstanding the controversy over the term "unreasonable" and the ultimate resolution of that controversy, the courts find that answer erroneous.

B. The public trust

A concept to which much significance is attached in 3055 is that of "the public trust". As first introduced, the Sax draft used the term in several different contexts. In section 2 it refers to ". . . public trust in the natural resources of the states". In section 3 the phrase is ". . . natural resources or the

public trust of the state". In section 4 it speaks simply of "the public trust".

Unquestionably, Professor Sax knew what he meant by the term. But the confusing and different contexts in which it was used and the complexity of the concept itself, as Sax defined it, was disconcerting. Moreover, there are different conceptions of public trust. Accordingly, a motion was made in House committee that it be stricken. As a compromise, an expression consistently used throughout the enrolled bill was decided upon. Now the act speaks in terms of the ". . . air, water, or other natural resources or the public trust therein".

Sax urges a very special significance to the term. He states that:

"Confusion has arisen from the failure of many courts to distinguish between the government's general obligation to act for the public benefit, and the special, and more demanding, obligation which it may have as a trustee of certain public resources."[44]

Presumably, as was said at the outset, the state's authority to regulate these matters stems from its police power.

But to Sax's thinking, the public trust is obviously something very distinct from the protection of the air, water and other natural resources through the police power.

Among its salient characteristics are the public nature of the resource and use thereof, the fact that the use is not to be substantially altered, and the fact that it cannot be alienated to a private interest for a consideration (quasi-private condemnation of resources). Thus, it differs substantially from the preservation and protection to be afforded the state's natural resources under the police power. It connotes a trusteeship—a fiduciary duty to the public.

The public trust has received recognition, and in fact, is still in its embryonic stages, in the courts. It is a principle, the thrust of which is to preserve to the people their natural surroundings in the highest quality possible commensurate with the normal conduct of human affairs. Incidentally, it has made the people aware of their surroundings and made administrative agencies responsive to the people. It has afforded public access to administrative determinations. It strikes at the heart of the low-visibility agency decision making. Says Sax:

"[P]ublic trust law is not so much a substantive set of standards for dealing with the public domain as it is a technique by which courts may mend perceived imperfections in the legislative and administrative process. The public trust approach which has been developed . . . and the exercise in applying that approach to existing situations . . . demonstrate that the public trust concept is more than anything else, a medium for democratization.[45]"

III. CONCLUSION

That is where 3055 began. That is its underlying rationale. To democratize environmental law. To take a step, legislatively, into an area into which up to now only the courts have ventured. To short cut the process. To codify into a statute what has been only dicta in the cases that the people are the very real beneficiaries of a trust, the corpus of which is their environment. Will it work?

As 3055 left House committee with most of his recommended changes adopted, Governor Milliken gave this assessment:

"This bill certainly will not be the total answer to all our environmental problems. It is not a panacea. It will not be the total answer to all our environmental problems. But, it will serve to bring some of them into focus; perhaps more quickly than they are now.

"It will also, in some cases, produce quicker action from those agencies and instrumentalities of state and local government whose responsibility it is to protect the environment, as well as from the polluters themselves.

"Most importantly, it will permit direct citizen involvement in bringing much of this about, and hopefully, in so doing, will produce an increasing consciousness and conscience in every citizen of this state concerning the protection and preservation of his environment. For, ultimately, the quality of our environment is, not only the concern, but the responsibility, of every citizen.

"If this measure takes us one step closer to

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that realization it will have been worth the effort of its enactment.[46]"

3055 may do this and much more. Its concept is bold, though its execution might have been better. If it can withstand constitutional attack, or if it can be satisfactorily amended to provide for more definitive standards, it could revolutionize environmental law. The potential ramifications are virtually unlimited. Which of them will be realized, and to what extent, must await case by-case development under the Act.

The businessman-industrialist—especially in Michigan—awaits in frightened expectation; the activist-conservationist in childlike frenetic excitation.

FOOTNOTES

[1] *Mich. Comp. L. of 1948*, § 691.1201–07 (Act 127, P.A. 1970).

[2] Professor of Law, University of Michigan. A.B., 1957, Harvard University; J.D., 1959, University of Chicago. Has taught at the University of Colorado and at the University of California at Berkeley. In Washington, D.C., from July, 1969, to July, 1970, he studied, on a Ford Foundation grant, the use of law in environmental quality controversies.

[3] An organization, in turn comprised of 50 or more organizations, the natures of which span the spectrum from local PTAs, to black unit councils, to Kiwanis clubs, to garden clubs to conservation groups. WMEAC was formed in the Spring of 1968 at the initiation of Mrs. Willard E. Wolfe of Grand Rapids. Its stated purpose is to coordinate information, to educate the public, and "take whatever action is necessary" to protect the environment. This action has largely taken the form of encouraging legal and legislative action and generating support therefor. WMEAC has been most successful in enlisting the support of otherwise not primarily conservation oriented groups. It first confronted Professor Sax on January 28, 1969, with its problem: a need to effect governmental action in the protection of the environment. 3055 is the result.

[4] Representative Thomas J. Anderson, Democrat of the 28th House District, introduced the bill as its sole sponsor. An engineer by profession, after 10 years of local political activity, he was first elected to the House in 1964. He was reelected in 1966 and 1968 and stands for reelection in November, 1970. He is co-chairman of the House Conservation and Recreation Committee. *Mich. Man. 1969–70* (Mich. Dept. Ad.) at 191.

[5] The House Committee on Conservation and Recreation is comprised of 13 members, one of whom is a member of the bar. *Mich. Leg. Hdb. 1969–70.* (Comp. by Kenyon and Thatcher, 1969). Since the bill was labeled a conservation measure, it was assigned to that committee. More appropriately it might have been referred to House Judiciary.

[6] Representative Warren N. Goemaere, Democrat of the 72nd House District, although technically designated "co-chairman", is chairman of the committee for the 1970 session. Like Anderson, he was first elected to the House in 1964, was reelected in 1966 and 1968, and stands for reelection in November, 1970. *Mich. Man. 1969–70, supra,* Note 4, at 197.

[7] Testimony of the author, Hearings on H.B. 3055 before House Conservation and Recreation Committee, *75th Mich. Leg.*, Mar. 18, 1970 (unreported).

[8] See Appendix, *infra*, House Bill 3055 as introduced April 1, 1969, § 2. The purpose for removing the reference to the "State" in the enrolled bill was to avoid potential res judicata or estoppel problems; to avoid a construction that would preclude an action where a prior suit had litigated the same issue on similar or identical facts, but through a different party-plaintiff. Though maintained in the names of distinct parties-plaintiff, because the cases were declared to be in "the name of the State", the legal identity of the single party—the State—might have been imputed to the plaintiffs.

The reference to the doctrines of res judicata and estoppel in the enrolled bill (See Appendix, *infra*, §5(3), (lines 96 and 97) is to the customary application of those doctrines.

[8a] *Mich. Comp. L. of 1948*, § 691.1201–07 (Act 127, P.A. 1970).

[8b] Environmental Protection Act of 1970, S3575, 91 Cong. 2nd sess., 1970.

[9] *Mich. Const.*, art 4, § 52.

[10] See Appendix, *infra*, Enrolled House Bill 3055, §§ 1, 3(1), 4(1), 4(2), 4(3), 5(1) and 5(2).

[11] *McDonald* v. *Schnipke*, 380 Mich., 14, 22, 25, 26, N.W. (1968).

[12] *Mich. Const. Con. 1961—Official Record* (Knapp. ed.) Committee Proposal 125, Vol. II, at 2602–05. Mr. Millard reported as follows (at 2602):

"The proposed section submitted herewith is merely declaratory and has no automatic self executing quality. The wording has been examined by Professor William Pierce of the law school of the University of Michigan, who asserts that the section would not alter existing water law in any respect, either in riparian rights, meander lines or otherwise. Nor would the declaration of a public paramount interest in the air interfere with the traditional common law doctrine of the control of air space above real property. Nor would existing vested rights in property holders of the various forms of 'natural resources' be in any fashion disturbed."

The consequence of adoption of the provision, in short, does not lie in any alteration of existing law.

Mr. Hatch reemphasized the fact that the language is not self executing (at 2603):

"I want to make it perfectly clear that this amendment is merely declaratory. It has no automatic self executing qualities."

And Mr. Millard confirmed this again (at 2605).

"We have to have some protection against the waste of our natural resources. We do that now. Our legislature does have control over the natural resources, the use of them, and I feel that in the future that this is more or less just a memorializing of the legislature, that they have the right, the power. We are not giving them any power. They have that power. We are just telling them to look out into the future for our natural resources, the air and the water, and

to make some regulations so that they will not be used up for the other generations that are to follow."

[13] *McKibbin v. Corp. & Sec. Comm.*, 369 Mich., 69, N.W. (1963). Although speaking of the delegation of authority to an agency, the rule of *McKibbin* is equally—and more—applicable to a delegation to the courts.

[14] *Time Mag.*, August 24, 1970, at 37. The first state law of its kind in the U.S., the Michigan statute could inspire a flurry of odd-ball suits. If a Detroit resident dislikes auto pollution, for example, he might well ask a court to ban all downtown traffic.

[15] *Mich. Const.*, art. 3, § 2.

[16] See *People v. Piasecki*, 333 Mich. 122, 52 N.W. 2d 626 (1952); *Local 321, State, County and Municipal Workers of America v. Dearborn*, 311 Mich. 674, 19 N.W. 2d 140 (1945); and Parker, " Separation of Powers Revisited", 49 *Mich. L. Rev.*, 1009 (1951).

[17] *Lewis v. Grand Rapids*, 222 F. Supp. 349, 378 (W.D. Mich. 1963).

[18] *Northwood Properties Company v. Royal Oak City Inspector*, 325 Mich. 419, 39 N.W. 2d 25 (1949).

[19] *In re Consolidated Freight Co.*, 265 Mich. 340, 343, 251 N.W. 431, (1933).

[20] *Goethal v. Kent County Supervisors*, 361 Mich. 104, 113, 104 N.W. 2d 794 (1960).

[21] *Johnson v. Kramer Freight Lines*, 357 Mich. 254, 257-8, N.W. (1959).

[22] *McKibbin, Supra*, Note 13.

[23] Sec. 2(2) was added in the Senate Conservation and Tourist Industry Committee. Senator Basil W. Brown, Democrat of the 6th Senatorial District, proposed and moved the adoption of the language. A most able lawyer, Senator Brown later informally speculated that the language may not survive constitutional attack.

[24] See Appendix, *infra*, Environmental Protection Act of 1970, S. 3575, 91 Cong., 2d Sess. § 4(e) (1970), which provides:

"No bond shall be required by the court of the plaintiff: *Provided*. That the court may, upon clear and convincing evidence offered by the defendant that the relief required will result in irreparable damage to the defendant, impose a requirement for security to cover the costs and damages as may be incurred by defendant when relief is wrongfully granted: *Provided further*, That such security shall not be required of plaintiff if the requirement thereof would unreasonably hinder plaintiff in the maintenance of his action or would tend unreasonably to prevent a full and fair hearing on the activities complained of."

Quite clearly the provision says nothing, except that the court may or may not, in its discretion, require bond. The language in Enrolled Bill 3055 was appended on the floor of the House, it having been decidedly rejected in House Committee.

[25] Black's Law Dictionary 1353 (4th ed. 1951) says of *prima facie case* that: "A litigating party is said to have a prima facie case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A prima facie case then is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side."

[26] *Mich. Gen. Ct. R.* 601 states: "The burden of proof, presumptions, judicial notice, and other rules of evidence shall be according to the common law except as modified by statute or court rule."

Thus, the "exception" for the "affirmative defense" is somewhat ambiguous. If in fact section 3(1) makes an exception from the common law rule that the burden of establishing such a defense is on its proponent, it fails to state what rule shall govern. Accordingly, an assumption must be made that no "exception" is in fact created.

[27] Professor Sax strongly urges this point. See Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", 68 Mich. L. Rev. 473 (1970).

[28] On April 14, 1970, a meeting was held in the Washington, D.C. office of Professor Sax. In attendance were: Representatives Anderson and Goemaere, Senator Gordon Rockwell, Chairman of the Senate Conservation and Tourist Industry Committee, Mr. James L. Rouman, then Executive Director of the Michigan United Conservation Clubs, Professor Sax, and the author. With all present concurring, the author agreed to the deletion of this language and, in turn, Professor Sax agreed that the word "unreasonable" remain in the bill. Representative Goemaere subsequently moved that the word "unreasonable" be stricken—see pp. 20–22, *infra*.

[29] *United States v. Western Pacific R.R. Co.*, 352 U.S. 59, 63-4 (1956).

[30] *Mich. Comp. L. of 1948*, §§ 24.201-24.313.

[31] Id. § 24.306.

[32] *Lewis v. Grand Rapids, supra*, at Note 17.

[33] Cf. pp. 8 and 9. Notes 15–22, *supra*.

[34] *In re Consolidated Freight Co., supra*. Note 19, at 343.

[35] *O'Brien v. State Hwy. Commr.*, 375 Mich. 545, 557, N.W. (1965).

[36] Cooper, *State Administrative Law*, 267 § 4(D) (1965).

[37] *Mich. Comp. L. of 1948*, § 24.264.

[38] See S. 3575, 91 Cong., 2d Sess. (1970), §§ 2(b), 3(a) and 4(a), wherein the word "unreasonable" appears. The insertion of the term was made by staff personnel before in-

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troduction to the U.S. Senate Committee on Commerce.

[39] Cf. pp. 14 and 15, Note 28, *supra*.

[40] The Michigan House has 110 members. Thus, 56 votes were needed to carry Representative Goemaere's motion. The House of the 75th Legislature has a constituency of 57 Democrats and 53 Republicans, *Mich. Leg. Hdb. 1969–70.* The record role call on Representative Goemaere's motion reflects 51 Democrats and 5 Republicans voting "Yea", H. Journal No. 57, 75th Leg. Reg. Sess. (1970), roll call No. 335 at 1296.

[41] The Michigan United Conservation Clubs, through Dr. Frederick L. Brown, its president, was signally effective here. Spooked by a prior legislative hassle of some years before when the word "willful" crept into a conservationist piece of legislation, Brown vehemently and vociferously opposed the term "unreasonable." From his testimony, and specific references to the fact, it was clear that Brown and other conservationist interests erroneously imputed to the word the same connotation as in commonly ascribed to "willful".

[42] *62 Harv. L. Rev.* 77, 78–9 (1948).

[43] Cf. pp. 8, 9, 17–19, Notes 15–22, 31–36.

[44] Sax, *supra*, Note 27 at 478.

[45] Id. at 509.

[46] Press release, Governor William G. Milliken, Mar. 31, 1970.

From the perspective of both Legal Advisor to Governor William G. Milliken and ad hoc counsel to the House committee which drafted the measure, the author affords an incisive analysis of Michigan House Bill 3055. The Environmental Protection Act of 1970, effective October 1, 1970. The Michigan Legislature maintains no permanent record of its committee hearings or floor debate. Accordingly, through his observations and recollections, the author here provides the only recorded history, with a focus on legislative intent, of the passage of this remarkable Act. Since the Michigan version is expected to be the model for the enactment of similar measures in other states (now pending in Colorado, Massachusetts, New York, Pennsylvania, Tennessee and the U.S. Congress, and expected to be introduced in Texas and California) and since there promises to be much litigation brought pursuant to the Act, this article should be of particular value to legislative members and administrative officials, as well as to corporate, government and private attorneys.

APPENDIX

(Enrolled House Bill No. 3055 as signed by Governor William G. Milliken on July 27, 1970 (Act 127, P.A. 1970, Mich. Comp. L. 1948, §§ 691.1201–07))

An Act to provide for actions for declaratory and equitable relief for protection of the air, water and other natural resources and the public trust therein; to prescribe the rights, duties and functions of the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity; and to provide for judicial proceedings relative thereto.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Thomas J. Anderson, Gordon Rockwell environmental protection act of 1970".

Sec. 2 (1) The attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction.

(2) In granting relief provided by subsection (1) where there is involved a standard for pollution or for an anti-pollution device or procedure, fixed by rule or otherwise, by an instrumentality or agency of the state or a political subdivision thereof, the court may:

(a) Determine the validity, applicability and reasonableness of the standard.

(b) When a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Sec. 2a. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in any action brought under this act the court may order the plaintiff to post a surety bond or cash not to exceed $500.00.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is likely to pollute, impair or destroy the air, water or other natural resources or the public trust therein, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that such conduct is consistent with the promotion of the

public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts shall apply to actions brought under this act.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action.

(3) Costs may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are required to protect the air, water and other natural resources or the public trust therein from pollution, impairment or destruction.

(2) If administrative, licensing or other proceedings are required or available to determine the legality of the defendant's conduct, the court may remit the parties to such proceedings, which proceedings shall be conducted in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. In so remitting the court may grant temporary equitable relief where necessary for the protection of the air, water and other natural resources or the public trust therein from pollution, impairment or destruction. In so remitting the court shall retain jurisdiction of the action pending completion thereof for the purpose of determining whether adequate protection from pollution, impairment or destruction has been afforded.

(3) Upon completion of such proceedings, the court shall adjudicate the impact of the defendant's conduct on the air, water or other natural resources and on the public trust therein in accordance with this act. In such adjudication the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this act.

(4) Where, as to any administrative, licensing or other proceeding judicial review thereof is available, notwithstanding the provisions to the contrary of Act No. 306 of the Public Acts of 1969, pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Sec. 5. (1) Whenever administrative, licensing or other proceedings, and judicial review thereof are available by law, the agency or the court may permit the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct which has or which is likely to have, the effect of polluting, impairing or destroying the air, water or other natural resources or the public trust therein.

(2) In any such administrative, licensing or other proceedings, and in any judicial review thereof, any alleged pollution, impairment or destruction of the air, water or other natural resources or the public trust therein, shall be determined, and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

Sec. 6. This act shall be supplementary to existing administrative and regulatory procedures provided by law.

Sec. 7. This act shall take effect October 1, 1970.

This act is ordered to take immediate effect.

HOUSE BILL NO. 3055, AS INTRODUCED APRIL 1, 1969

A bill to provide for action for declaratory and equitable relief for protection of the air, water and other natural resources of the state; to prescribe the duties of the attorney general, political subdivisions and the citizens of the state; and to provide for judicial proceedings relative thereto.

The people of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "natural resource conservation and environmental protection act of 1969".

Sec. 2. The attorney general, a city, village or township or a citizen of the state may maintain an action for declaratory and equitable relief in the name of the state against any person, including a governmental instrumentality or agency, for the protection of the air, water and other natural resources of the state from pollution, impairment or destruction, or for protection of the public trust in the natural resources of the state.

Sec. 3. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has, or is reasonably likely to pollute, impair or destroy the air, water or other natural resources or the public trust of the state, the defendant has the

burden of establishing that there is no feasible and prudent alternative and that the conduct, program or product at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a report to the court in the action. The costs thereof may be apportioned to the parties if the interests of justice require.

Sec. 4. (1) The court may grant temporary and permanent equitable relief, or may impose conditions on the defendant that are

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required to protect the public trust or air, water and other natural resources of the state from pollution, impairment or destruction.

(2) If administrative, licensing or other such proceedings are required or available to determine the legality of the defendant's conduct, program or product, the court may remit the parties to such proceedings. In so remitting the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the natural resources or public trust of the state. In so remitting the court shall retain jurisdiction of the action pending completion thereof, for the purpose of determining whether adequate consideration has been given to the protection of the public trust and the air, water or other natural resources of the state from pollution, impairment or destruction, and, if so, whether the agency's decision is supported by the preponderance of the evidence upon the whole record.

(3) If such consideration has not been adequate, the court shall adjudicate the impact on the public trust and air, water and natural resources of the state in accordance with the preceding sections of this act, or where, as to any such administrative, licensing or other proceeding, judicial review thereof is available, the parties shall be remitted to the processes of such review as augmented by section 5, and upon the vesting of jurisdiction in any other court of the state, the court may dismiss the action brought hereunder without prejudice to the parties.

Sec. 5. (1) In such administrative, licensing or other proceeding, and in a judicial review thereof made available by law, the attorney general, a city, village or township, or a citizen of the state may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct, programs or products which may have the effect of impairing, polluting or destroying the public trust or air, water or other natural resources of the state.

(2) In any such administrative, licensing or other proceeding, the agency shall consider the alleged impairment, pollution or destruction of the public trust of air, water or other natural resources of the state and no conduct, program or product shall be authorized or approved which does, or is reasonably likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

(3) In an action for judicial review of any proceeding described in subsection (2), the court, in addition to any other duties imposed upon it by law, shall grant review of claims that the conduct, program or product under review has, or is reasonably likely to impair, pollute or destroy the public trust or the air, water or other natural resources of the state, and in granting such review it shall follow the standards and proceedings set forth in this act in addition to the review authorized by Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

Sec. 6. In an action where a plaintiff or intervenor seeking judicial adjudication as provided by this act has failed to intervene in any administrative, licensing or other such proceedings, the court may remit such plaintiff or intervenor to such proceeding for amplification of the record therein, and may order the granting of intervention and the granting of review therein as provided in section 5. However, where intervention was available in such administrative, licensing or other proceedings, and where the plaintiff or intervenor seeking judicial adjudication hereunder wilfully and inexcusably refused intervention therein, the court may dismiss the action with prejudice to the plaintiff or intervenor.

S. 3575

(Environmental Protection Act of 1970, 91st Cong., 2d Sess., introduced Mar. 10, 1970, by Senators PHILIP A. HART and GEORGE MCGOVERN)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Environmental Protection Act of 1970".

SEC. 2. (a) The Congress finds and declares that each person is entitled by right to the protection, preservation, and enhancement of the air, water, land, and public trust of the United States and that each person has the responsibility to contribute to the protection and enhancement thereof.

(b) The Congress further finds and declares that it is in the public interest to provide each person with an adequate remedy to protect the air, water, land, and public trust of the United States from unreasonable pollution, impairment, or destruction.

(c) The Congress further finds and declares that hazards to the air, water, land, and public trust of the United States are caused largely by persons who are engaged in interstate commerce, or in activities which affect interstate commerce.

SEC. 3. (a) Any person may maintain an action for declaratory or equitable relief in his own behalf or in behalf of a class of persons similarly situated, for the protection of the air, water, land, or public trust of the United States from unreasonable pollution, impairment, or destruction which results from or reasonably may result from any activity which affects interstate commerce, wherever such activity and such action for relief constitute a case or controversy. Such action may be maintained against any person engaged in such activity and may be brought, without regard to the amount in controversy, in the district court of the United States for any judicial district in which the defendant resides, transacts business or may be found: *Provided*, That nothing herein shall be construed to prevent or preempt State courts from exercising jurisdiction in such action. Any complaint in any such action shall be supported by affidavits of not less than two technically qualified persons stating that to the best of their knowledge the activity which is the subject of the action damages or reasonably may damage the air, water, land, or public trust of the United States by pollution, impairment, or destruction.

(b) For the purpose of this section, the term "person" means any individual or organization; or any department, agency or instrumentality of the United States, a State or local government, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States.

SEC. 4. (a) When the plaintiff has made a *prima facie* showing that the activity of the defendant affecting interstate commerce has resulted in or reasonably may result in unreasonable pollution, impairment, or destruction of the air, water, land, or public trust of the United States the defendant shall have the burden of establishing that there is no feasible and prudent alternative and that the activity at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the paramount concern of the United States for the protection of its air, water, land, and public trust from unreasonable pollution, impairment or destruction.

(b) The court may appoint a master to take testimony and make a report to the court in the action.

(b) The court, or master, as well as the parties to the action, may subpoena expert witnesses and require the production of records, documents, and all other information necessary to a just disposition of the case.

(d) Costs may be apportioned to the parties if the interests of justice require.

(e) No bond shall be required by the court of the plaintiff: *Provided*, That the court may, upon clear and convincing evidence offered by the defendant that the relief required will result in irreparable damage to the defendant, impose a requirement for security to cover the costs and damages as may be incurred by defendant when relief is wrongfully granted: *Provided further*, That such security shall not be required of plaintiff if the requirement thereof would unreasonably hinder plaintiff in the maintenance of his action or would tend unreasonably to prevent a full and fair hearing on the activities complained of.

SEC. 5. The court may grant declaratory relief, temporary and permanent equitable relief, or may impose conditions on the defendant which are required to protect the air, water, land, or public trust of the United States from pollution, impairment, or destruction.

SEC. 6. This Act shall be supplementary to existing administrative and regulatory procedures provided by law and in any action maintained under the Act, the court may remand the parties to such procedures: *Provided*, that nothing in this section shall be deemed to prevent the granting of interim equitable relief where required and so long as is necessary to protect the rights recognized herein: *Provided further*, That any person entitled to maintain an action under this Act may intervene as a part in all such procedures: *Provided further*, That nothing herein shall be deemed to prevent the maintenance of an action, as provided in this Act, to protect the rights recognized herein, where existing administrative and regulatory procedures are found by the court to be inadequate for the protection of such rights: *Provided further*, That, at the initiation of any person entitled to maintain an action under the Act, such procedures shall be reviewable in a court of competent jurisdiction to the extent necessary to protect the rights recognized herein: *and provided further*, That in any such judicial review the court shall be bound by the provisions, standards, and procedures of sections 2, 4, and 5 of this Act, and may order that additional evidence be taken with respect to the environmental issues involved.

Mr. YOUNG of Ohio. Mr. President, the legislation we are considering today may well be the most important environmental protection measure ever before this Congress. Its provisions could mean that, within 5 years, the air in our cities will be fit to breathe, no longer endangering the health of our citizens.

To accomplish this vitally necessary task will be difficult. With our factories and our automobiles we have utterly befouled our urban air. To clean it will take bold and drastic steps. This bill provides such steps.

National air quality standards will be set at the level necessary to protect public health, and States and regions would be required to attain that quality of air within a statutory deadline. While States and regions would continue to have the primary responsibility for implementing those standards, and enforcing timetables and emission requirements on particular sources, the Secretary of Health, Education, and Welfare would have backup authority to do any task a State was unwilling or unable to do itself.

One important aspect of this bill deals with emissions of hazardous substances. The definition of substances subject to this section has been tightly drawn by

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the committee, so that only air pollution agents which even in trace amounts cause or contribute to an increase in mortality or serious irreversible or incapacitating reversible damage to health, will be included.

The provision requires national emission standards for such substances. The standard must preliminarily be set at zero for any substance the Secretary finds hazardous, putting the burden on the emitter to show that a higher emission level will be hazardous. It was not intended by the committee that a technically unachievable zero emission level be set unless the substance is so dangerous that any emissions endanger health. Only in that case would emissions be prohibited, a step which conceivably could force plants to suspend operations. Every possible procedural safeguard is available to an affected industry under the hazardous substance provision: the protections of the Administrative Procedures Act, a public hearing in which to make its case before the Secretary, the judicial review of any standard or other to abate to which it takes exception.

The bill also sets a dramatic goal for controlling emissions from new automobiles. By 1975, the emissions from cars must reach the levels which the National Air Pollution Control Administration has projected are necessary to protect the public health. To avoid disrupting a major industry, which contributes much to the national economy, the committee approved a mechanism for extending the deadline 1 year if the automobile industry, having made all good faith efforts, is unable to meet the standards by 1975.

This is not an arbitrary provision. It reflects the understanding of control technology the committee gained through extensive hearings and meetings with the auto industry and the National Air Pollution Control Administration. The members of the committee were confident that this deadline can be met, and that a clean car can be achieved without wrecking the auto industry.

In this bill, $1,190 million is authorized for the costs of research and air pollution control. This is only the Federal commitment. The States and cities must also heavily involve themselves in this effort, as must the private sector.

S. 4358 is the product of much work by the Subcommittee on Air and

Water Pollution, and by the parent Committee on Public Works, of which I am a member. It is a tough bill which will give us, finally, the tools to clean up the Nation's air.

Mr. NELSON. Mr. President, the United States today is at a crucial point in the battle to halt the continuing deterioration of our physical surroundings and to begin to provide improved quality of life for all our citizens and their descendants. As the widespread increase in smog episodes and oil-clogged beaches demonstrated this summer, environmental pollution is a national issue which reaches all communities, regardless of size and location, and touches each of our lives, regardless of age or social status. Poisoned air, contaminated water, and despoiled land rob each one of us of a treasured national heritage and threaten our health and physical property. To reverse this trend, it will require the unified commitment for environmental quality of each one of us—individual citizens, public officials, and the industrial community.

On his 80th birthday, Walter Lippmann gave evidence of his continued prescience and ability to accurately survey our national condition when he noted:

> Our only hope is that a sufficiently large number of people will become actively concerned about the destruction of the environment. . . . If a sufficiently powerful group of people understand . . . (they) can lead the rest.

Mr. President, today the Senate of the United States is in a position to offer this Nation the leadership needed to succeed in the fight to halt air pollution. Senator Edmund S. Muskie and the Senate Public Works Committee have brought to the floor of the Senate the toughest piece of environmental legislation ever considered by Congress.

S. 4358, the National Air Quality Standards Act of 1970, could mark the turning point in the struggle against air pollution. The 1975 deadlines for compliance with national air quality standards and the development of a clean car are essential to the protection of public health. The new enforcement provisions in the act mean business and will insure compliance with those deadlines.

I especially want to congratulate Senator MUSKIE—not only for his leadership in writing the new bill, but also for bucking the strong tide of industry opposition to this legislation. Senator MUSKIE, Chairman RANDOLPH, and the other members of the committee have offered Americans new hope for a clean and healthy environment.

As Senator MUSKIE stated yesterday:

> The legislation we take up today provides the Senate with a moment of truth: a time to decide whether or not we are willing to let our lives continue to be endangered by the wasteful practices of an affluent society, or whether we are willing to take the difficult but necessary steps to breathe new life into our fight for a better quality of life.

I emphatically agree. This legislation is a test of our commitment to providing national leadership and national policy for air pollution control.

Air pollution directly attacks the health of all Americans. This bill before us is a firm congressional statement that all Americans in all parts of the Nation should have clean air to breathe, air which does not attack their health. And this bill sets the goal of achieving clean air in the Nation within the next few years.

The responsibility of this body and of the Congress is to determine what the public interest requires to protect the health of tough decisions and equally rigorous challenges. But the situation is of such a critical nature that we cannot shirk this responsibility. It is the proper time to state the goals and outline for clean air. This

bill is an acceptance of this responsibility to protect the public health and states an outline for clean air in clear, precise terms.

It is particularly encouraging to see that S. 4358 recognizes the motor vehicle as the most serious single cause of air pollution in the country. Earlier this year I proposed that January 1, 1975, be the national goal for the manufacture and sale of nonpolluting automobile engines, that all air pollution control devices on motor vehicle engines have an extended warranty to make sure that they function after the vehicle is on the road, and that individual States be allowed to set stricter emission standards for motor vehicles than required by the Federal Government. The Public Works Committee has taken this same basic position.

Contrary to the statements of industry, this bill does not dictate technology. The measure simply states that it shall be the national policy to have a clean automobile engine in 5 years. It issues a public challenge to the automobile industry to devote their vaunted technological and manufacturing resources to the task of meeting this goal. This is a challenge which is certainly proper for Congress to issue. It is a statement of national policy which cannot be compromised by the Automobile Manufacturers Association.

If the Senate and the Congress agree to make clean air within the next 5 years a national goal, we must also be prepared to commit the resources necessary to meet this promise. Clean air is not just the business of industry. If the national challenge for clean air is issued, it will require the hard work and determination of each of us—private citizen and public official as well as the business community. We face the opportunity to join together in working for an improved quality of life—a quality of life that we will share together in any case. The question is not whether we have the means to make cooperative effort; it is whether we have the will and determination. Today, this question is directly posed to the Congress and to this body.

Mr. PROUTY. Mr. President, I would like to make a few remarks at this time about the new air pollution bill, S. 4358.

As cosponsor of S. 3466, the original administration bill on air pollution, I want to add my expression of support for this new bill. Three years ago, we passed the Air Quality Act and hopefully initiated an era of gradually reduced air pollution.

It soon became clear that the disease proved too strong for our first attempt to cure it. For a variety of reasons, pollution has increased. Ironically, as we all know, the problem is a byproduct of affluence—and as we grow richer in the years to come, we must not let bad air compete with our economic progress for the future.

The National Air Quality Standards Act of 1970 contains tough provisions to counteract our pressing problem. I do not wish to enumerate the points of the bill, for excellent summaries have already been given. Rather, I would like to concentrate on some important aspects of the bill, the reasons for which enactment is imperative.

An important underlying philosophy of the bill is that it is the right and duty of each State to develop its own plans to

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implement the standards set by the Secretary. To be sure, minimum Federal standards are a must, as they free the 50 States from the necessity of competing for business by lowering their standards. Yet States especially imperiled by foul air are not enjoined

from passing more stringent measures.

The sensible means of attacking this problem which varies so radically from one region to the next is, therefore, at the State level with the Federal Government willing and able to assist when needed.

An innovative feature of the bill, in keeping with the urgency of the problem, is the establishment of definite deadlines. State implementation plans must be designed to assure attainment of national ambient air quality standards within 3 years of acceptance. The auto manufacturers are required to reduce pollutant emissions by 90 percent on their 1975 models. In each case the basic tenet of the new bill is explicit: for the first time, air quality standards will take precedence over objections of economic impracticality and technical impossibilities. Products which make life easier at the cost of life itself are worthless. Thus, we are saying that industry must make peace with our environment and we are placing the emphasis on how we grow instead of how fast we grow.

Would-be polluters are forewarned: A livable environment is more important to man and his survival than all of the marketable gadgets produced by our economy to make our life easier.

The air pollution bill, therefore, provides reasonable and effective methods for solving the air pollution problem that has plagued us for so long. It merits our support, not just as an expression of concern, but as a national commitment consistent with the right of all citizens to clean air.

Mr. MONTOYA. Mr. President, today the U.S. Senate faces a critical choice. As a member of the subcommittee on Air and Water Pollution of the Public Works Committee, which is chaired by the distinguished Senator from Maine (Mr. MUSKIE), I have watched this body and this country become increasingly aware of the problems of environmental quality.

Air pollution is not simply a problem of the east coast or Los Angeles. America is industrial and mobile, and that means air pollution. I have received numerous letters from constituents in New Mexico raising concerns about the quality of the air they breathe as New Mexicans and as travelers to other parts of this country. The city of Albuquerque is desperately trying to cope with a growing air pollution problem, and requested funds of over $263,000 for its program: the amount granted totaled only $64,000. I would hope that the stimulus of the passage of this bill and the increased funds it authorizes would help communities like this across the Nation.

Today we vote on the National Air Quality Standards Act of 1970, and our vote may have great influence on the kind of world we inhabit within the next 10 years, and the kind of world we leave our children and grandchildren. There is no time left for delay, for reexamination after reexamination. The problem of clean air has become critical now.

Why is this so? Primarily for two reasons. First, the growth of the sources of air pollution is rising rapidly. This is particularly true when we examine the case of the automobile. This Nation produces about 191 million tons of air pollutants annually, and 92 million tons, or 48 percent of the total, is produced by automobiles. Now here is the most startling fact relating to air pollution and automobiles: The number of motor vehicles in this country grows twice as fast as the number of people. Every moment we delay we compound the problem, and we will eventually have to face the results of any delay. Postponement would simply make the

problem more difficult and costly to cure.

Automobiles are not the only source of air pollution growing at a very rapid rate. Studies indicate that the use of electric power will increase even faster. If these studies are correct, and such studies have usually underestimated the increases in the past, then this country will be using five times more electricity in the year 2000 than we presently use. We must decide to put proper controls on the new plants that will produce this power now, before they are built. It is false economy to build first and then attach control devices during some later state of panic. The present bill under consideration would instruct industry to take proper steps now, by requiring new facilities to adopt the best available pollution control technology. This is a sensible provision, not an unrealistic requirement.

The second reason clean air has become a critical problem is that we have not forced ourselves and our economic system to include pollution as a "cost" to anyone. We have allowed, in fact encouraged, industry to pollute. If we do not adopt the present bill before us, essentially in the same form given it by the Air and Water Pollution Subcommittee and the full Public Works Committee, then we will be continuing the same inadequate system with the same inherent mistakes. We can no longer afford those mistakes. In the past an industry received no reward if it controlled its pollution. In fact, it was penalized by raising its own costs of production. The present bill would put all new facilities on the same footing, and would also do much to give Americans clean air. Competitive disadvantage is not created when all new facilities are required to adopt the same level of pollution control technology. This is a reasonable and workable scheme, and I would hope that my Senate colleagues would agree with this concept.

S. 4358 calls for the establishment of national air quality standards. This by no means eliminates the States, for they are responsible for devising implementation plans so that each State can reach the level set in the national standards. Our State and regional organizations simply have not moved fast enough in cleaning up this country's air. The present bill accelerates the cleanup schedule while maintaining the States as part of that program.

The intense activity on the part of the automobile industry with regard to the deadline of January 1975, for compliance with emission standards that had previously been targeted for 1980 has drawn the attention of the press and the public to this portion of the bill. I want to make myself completely clear on this point: Automobiles have not been singled out as a whipping boy; challenging deadlines have been set because automobiles are such a dominant part of the air-pollution problem. They simply cannot be ignored. The car industry says that it does not know how it will meet these standards by the dates set in the bill. Yet four young students from Wayne State University have already figured out how, and have driven across the country in an automobile that meets the 1980 standards right now. This car used unleaded gas—gas that is now available at service stations across the country—and a 1971 Ford Capri V–8 engine. In other words, this was not some little two-cylinder engine nursed across the country by an exotic fuel. The students attached catalytic mufflers, an exhaust recirculation system, an electric fuel pump, insulated fuel line, a carburetor sensitive to temperature changes, and produced a relatively clean engine.

In short, a relatively clean engine by 1975 is not an unreasonable hope,

given the experience of these students. The past record of the auto industry shows that it can usually move faster than it thinks it can when called upon to do so. The present bill does not say that Congress knows how to build such an engine. It simply says that the public health is in danger, and that we must call on the industry with the know-how to produce such an engine. 1975 may be too late. 1980 is undoubtedly too late. We are faced with a crisis, and must act now. Smog killed 20 and made 5,900 ill in Donora, Pa., in 1948. Nothing happened. Impure air killed 4,000 in London in 1952. Very little happened. Foul air caused more than 700 deaths above normal in New York in 1953, 1963, and 1966. Very little happened. Carbon monoxide levels in Chicago, New York, and some other cities have reached a level at which the public health is impaired. The eastern seaboard received another scare this summer when it appeared that a serious air pollution crisis was bearing down on these urban centers. Unnoted by these statistics are the many people who have respiratory diseases that are aggravated by the kind of air they must breathe.

Mr. President, we must act now, and we should act favorably on S. 4358 without adding any crippling amendments.

Mr. COOPER. Mr. President, yesterday, I spoke on the bill, but today I emphasized again the importance of the bill. Following its well developed tradition, the Committee on Public Works has brought to the Senate floor unanimously and bipartisanly reported bill S. 4358, to amend the Clean Air Act, and for other purposes. It is particularly significant that this bill was reported from committee unanimously and that the committee considered the bill in bipartisan fashion for the amendments to the Clean Air Act represent a great deal more than pollution control provisions, rather, in fact they constitute social legislation which, as the distin-

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guished Chairman of the Subcommittee has pointed out, constitute perhaps the most significant piece of domestic legislation that will be considered by the Congress this session.

The quest for environmental quality has brought the society to the point of making difficult choices. Difficult choices because they affect economics, growth, development, and many of the other traditional social activities and goals. To many, the placing of any constraints on these activities is outweighed by a continued unrestricted growth and development. However, the committee, in these Clean Air Act amendments, views the restoration and maintenance of public health as a paramount objective. The commitee is also cognizant of the fact that continued degradation of the environment through air pollution could cause serious changes in the natural systems regulating the biosphere and possibly destroy the earth's ability to sustain life.

These are not meant to be alarmist fears. However, the evidence which is accumulating should give every reasonable man cause for concern. We now know, although with varying degrees of precision, that incident sunlight striking the surface of the earth has been reduced significantly as a result of air pollution. In Washington, D.C., for instance, the Smithsonian Institution has recorded a 16-percent reduction in incident sunlight striking the surface of the earth at the Mall. We know that the air pollution is triggering competing forces, one causing or tending to cause a cooling of the earth's atmosphere and the other causing or tending to cause a heating of the earth's atmosphere, but we are not clear as to which of these forces

are predominating. Both have great implications for continued success of life on earth.

Similarly there is now evidence that air pollution is causing a significant deterioration in the fertility of our soil through the leaching of essential nutrients that occurs when acid rainfall percolates through the soil. All of these factors must be given great attention by all of those of us who are concerned about the future.

However, the committee has recognized that short-term adverse effects of air pollution involving the health of the citizens of this Nation must be remedied as soon as possible. Since the enactment of the Clean Air Act in 1963 and the Air Quality Act of 1967, a great deal of information has been learned about the character of air pollution, its extent, and about its effects on health and welfare. The data can only be summarized as requiring action. In many areas of this Nation, and in almost every metropolitan region above 50,000 people, the quality of the air is well below that necessary to maintain public health. For some pollution agents the problem is particularly severe; for instance, carbon monoxide, sulfur oxide, oxides of nitrogen, and hydrocarbons. The effects produced in these high pollution areas range from outright disease causation to mutagenicity and carcinogenicity, to substantial increase in respiratory disease, and, significantly, to decreased work performance and attendance. All of these problems have reached proportions where the committee believes that it is necessary to act to bring air pollution under control and attain the quality of air necessary to protect the health of our persons. This is the general objective of the bill before the Senate today.

The bill continues the subdivision of the Clean Air Act into three titles to provide a comprehensive and systematic air pollution control program. Title I deals with stationary sources of pollution; title II deals with moving sources of pollution; and title III contains general administrative provisions applicable to the overall act. In part, the major changes proposed in title I result from the adoption of the President's proposal to establish national ambient air quality standards. Through such standards every area of the Nation will be subject to a standard and, therefore, required to develop an implementation plan. The committee modified the President's proposal somewhat so that the national ambient air quality standard for any pollution agent represents the level of air quality necessary to protect the health of persons. Further the bill requires attainment of this quality of air within an established period of time, 3 years, measured from the date of approval or promulgation of the implementation plan. The committee has adopted this framework based upon a decision that the attainment of the quality of ambient air necessary to protect health is a high priority for this Nation.

In order to provide ultimately for clean air and avoid the chronic degradation of the environment and thereby improve the quality of life, the committee has provided that in addition to establishing national ambient air quality standards the Secretary shall establish national ambient air quality goals; such goals representing the quality of air which will not produce any known or anticipated adverse effect on men or the environment. The committee recognizes that the attainment of such a quality of air cannot be achieved in many areas of the Nation for many years and, therefore, provides that each region shall establish the period of time necessary to achieve national ambient air quality goals, subject, of

course, to the approval of the Secretary.

The bill does require that the States, in submitting their implementation plan, include those provisions necessary to achieve the ambient air quality goal. The committee recognizes, however, that, in many instances, the program necessary to move from national ambient air quality standards to national air quality goals will require more detailed and extensive analysis than that required for standards and therefore provides an additional 18 months for the development of that portion of the implementation plan.

Another benefit of the concept of national ambient air quality goals is that it provides for the retention and maintenance of present ambient air quality in regions where that air quality is of the quality established by the goal.

The bill recognizes that the control and attainment of ambient air quality standards and goals is dependent upon rigorous application of emission controls. Consequently, the bill provides through four separate procedures for the application of such controls.

First, the bill provides that in developing each implementation plan each air quality control region in every State is required to establish emission requirements for every source of air pollution within such region in order to achieve the quality of ambient air established by the national air quality standard.

Second, the Secretary is required to establish emission standards for pollution agents or combination of such agents, called selected pollution agents, which are not appropriate for the establishment of ambient air criteria and national ambient air quality standards. The Secretary is to establish these emission standards for both new and existing stationary sources which are national in scope.

Third, the Secretary is authorized to initiate an innovative administrative process leading to the development of emission controls for those substances which he finds to be extremely hazardous to health of persons. The Secretary establishes these emission controls through the publication of the proposed prohibition of such pollution agents and promulgates such prohibition unless he determines that a departure from a zero emission for such pollution agent will not jeopardize the health of persons whereupon he promulgates an emission standard prescribing the permissible level of emissions for such pollution agents.

In establishing a fourth class of emission controls, the committee has adopted another of the President's recommendations and requires the Secretary to establish emission controls for all new air pollution facilities of national scope. Through such standards of performance maximum available technology will be installed in all new facilities. With this mechanism, the committee believes that new facilities will be constructed to achieve maximum air pollution control, and, at the same time provide that all new facilities are equal with respect to air pollution control and therefore eliminate a large element of "forum shopping" that is possible if new facilities are not required to meet the level of pollution control.

The committee has further refined the opportunity for public participation in the administrative procedures under the act. It has been demonstrated, pursuant to existing law, that public participation is extremely important in the development of air pollution programs across the country. In requiring that each air quality control region consider the establishment of ambient air quality stand-

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ards more stringent than the nationally promulgated standard, the bill provides a clear opportunity for the citizens of each region to choose the quality of air that they desire through full consideration of the issues in a public forum.

It has become abundantly clear that air pollution control, as is the case in any good law, is dependent upon a credible and enforceable statute. One of the

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principal difficulties for the existing law has been the lack of a decisive enforcement authority and the bill before the Senate seeks to streamline and expedite this authority so that procedural delays in enforcement activities do not frustrate the clear intent of the National Air Quality Standards Act of 1970.

In amending title II the committee recognized that a great portion of the pollution problems in many areas are attributable to emissions of pollution agents from moving sources, including the automobile, commercial vehicles, aircraft and vessels. The committee therefore proposes to authorize the establishment of emission standards for all classes of moving vehicles, including both new and old commercial vehicles, vessels and aircraft in distinction to existing law which authorized the establishment of emission standards for only new vehicles. In addition, reflecting the percent contribution to air pollution made by the automobile, the committee has directed to the light duty vehicle particular attention, designed to achieve a reduction in emissions necessary, if the urban areas of the country are ever to achieve and maintain national ambient air quality standards and goals.

Under existing law the test the Secretary must consider in establishing emission controls for automobiles is whether such control is economically and technologically feasible. This, in effect, has made technology and economic feasibility factors, which are under the control of industry, dictate public policy rather than respond to public policy. The committee, recognizing the paramount interest in achieving ambient air quality necessary to protect the health of its citizens proposes to establish emission standards for automobiles based upon requirements related to ambient air quality rather than technological or economic feasibility. Through this mechanism the committee expects to develop maximum incentive to stimulate new technical and economic means of reducing vehicle emissions. Without such incentive, such innovation is not likely to be forthcoming.

The bill, therefore, sets the date of 1975 as the date after which it will be unlawful to sell any automobile which does not meet emission controls for two pollution agents, carbon monoxide and hydrocarbons, which must represent a 90-percent reduction from the level set by emission standards applicable in 1970. In addition, the bill establishes procedure to establish an additional emission standards representing 90-percent reductions for those pollution agents, such as nitrogen oxide, which have not yet been the subject of emission controls under existing law. In establishing these emission standards and strict schedules for compliance the committee recognized that it may be impossible for a manufacturer or manufacturers to comply with such standards before the effective date.

As is widely known the committee struggled with various provisions to provide for a single year suspension of such effective date upon a showing of certain evidence by an applicant

for such suspension. These alternatives ranged from provision that would have made a suspension available only from Congress, to suspension issued by the Secretary with no review, to suspension issued by the Secretary which, if not opposed by either House of Congress within a set period would become effective, to secretarial decision with review by an appellate court.

Mr. President, the committee adopted by a vote of 10 to 3 an amendment I offered with Senator BAKER, to establish a standard administrative procedure on the part of the Secretary, following which he would issue a decision to, or not to grant a suspension. Such secretarial decision is reviewable, by the terms of the provision, in the U.S. Court of Appeals for the District of Columbia. It should be noted that the suspension provision is for 1 year only and there are particular guidelines that the Secretary and, independently, the court must review prior to granting, affirming, or denying any such suspension. These guidelines, or tests, include first, the public interest of the United States, second, that all good faith efforts have been made to achieve compliance with the standard, and third, that the technology or other alternatives are not or have not been available to achieve compliance.

I prefer the judicial review framework in the bill for I believe that through the administrative process the Secretary can develop on the record all of the technical and other relevant information necessary to achieve a sound judgment. Similarly, and in accordance with general administrative law, such decision of the Secretary should be reviewable in the court of appeals so that the interests of all parties can be fully protected. With the record developed by the Secretary, the court, as an unbiased, independent institution, is the appropriate forum for reviewing such decision and making a judgment as to its quality. The normal rules of the court also provide the greatest amount of insulation from the political pressures that will undoubtedly surround a judgment of this type. At the same time, judicial review provides for full procedural and substantive due process for all interested parties. I therefore recommend to the Senate that this provision in the bill be retained.

I think the Committee on Public Works is to be commended for accompanying the stringent substantive provision regarding the air pollution control program with several procedural requirements and opportunities to clearly incorporate due process protection in the application of the proposed law. In three areas provision is made to seek relief from, or review of, administrative actions or the application of the statute. The first of these is a general judicial review provision so that administrative promulgations and decisions made pursuant to the act may be reviewed while maintaining the basic integrity of the act. In section 308 the committee recognizes that administrative actions will affect the interests of persons and that such actions should, therefore, be reviewable.

The second procedural opportunity for relief allows a Governor of a State to seek relief from the effect of an expiration of the period in which the bill would require the attainment of the quality of air established by the ambient standard. In so doing the committee recognizes there may be cause for impossibility of performance but adds safeguards so that the provision will only be used sparingly and where necessary so as to

provide incentive for the maximum effort to seek air quality.

The third specific relief provision is that I offered relating to the automobile provision discussion above.

The committee bill also breaks new ground in extending public participation, an essential element throughout the act, to enforcement proceedings. In section 304, the bill proposes to grant jurisdiction to the Federal district courts to hear charges of violation of particular provisions of the act brought by citizens acting in their own behalf. As originally proposed the provision troubled me with respect to its impact on administrative enforcement efforts and, of course, on the courts. During its consideration the committee made particular efforts to draft a provision that would not reduce the effectiveness of administrative enforcement, and not cause abuse of the courts while at the same time still preserving the right of citizens to such enforcement of the act.

The citizen suit provision has developed in a context of other proposals authorizing citizen access to the courts for environmental remedies at both the State and Federal level. Some of these proposals by, in effect, authorizing the development of a common law of pollution could reduce the effectiveness of the Clean Air Act. The most significant of these is an act recently signed into law by Governor Milliken of the State of Michigan.

Mr. President, the bill before the Senate may be the most significant domestic legislation of this Congress. It may be the most significant measure in a domestic sense of any Congress. It is a very complex bill. For me, it has been an educational process. The committee worked very well together and every member of the committee entered into the discussions. As ranking minority member I am very proud of the minority side as well as the majority and would like to particularly praise the staff of the committee.

Yesterday I spoke at length about them, and today I repeat that to Senator MUSKIE and to Senator BOGGS who have been leaders on these measures for many years I pay deep tribute, and to all members of the committee for their devoted work. To Senator RANDOLPH—the able chairman of the full Senate Committee on Public Works, who presided in the full committee over our final deliberation and acceptance of the bill. By the unanimous vote of the committee, may I say great credit is due, his fairness and objectivity helped produce the bill. And may I say, he was a strong right arm in supporting the approval of the Secretary—judicial views, written into the bill.

A MOVE TOWARD SURVIVAL

Mr. YARBOROUGH. Mr. President, the proposed National Air Quality Standards Act of 1970 is among the most crucial pieces of legislation to be considered before the Senate this year. I

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highly commend the efforts of Senator MUSKIE and his colleagues on the Public Works Committee who have worked so diligently on this piece of legislation.

We have heard an abundance of rhetoric regarding the urgency of the pollution problem. The National Air Quality Standards Act goes beyond the usual "call to action" or "statement of concern." The bill sets standards, establishes deadlines, and provides for the implementation of comprehensive attacks on the problem of air pollution. The effects of this act will be felt by every American. Our

citizenry should be provided with breatheable air for the sake of their personal physical health. The very survival of mankind is threatened if we continue to abuse the fragile bal ance of our environment. This bill seeks to bring about the necessary improvement in the quality of our air by January 1, 1975. We can no longer afford to allow millions of tons of contamination to be dumped into our atmosphere year after year by automobile and industrial emissions. We hear many suggestions that this legislation establishes a goal, the achievement of which is beyond the capacity of American technology. I do not believe that we lack the ability to come up with the answers to the dilemma which confronts us. Certainly, the gravity of the challenge should not deter us from action.

I have worked for the passage of anti-pollution legislation since coming to the Senate in 1957. As chairman of the Senate Subcommittee on Health, I urge Senators to support this bill, which is so important to the health of the American people.

AIR QUALITY—A TIME FOR DECISIVE ACTION

Mr. McINTYRE. Mr. President, I stand today in support of the National Air Quality Standards Act of 1970. This bill, one of the most comprehensive ever on the subject, is essential to the national quest for environmental improvement defined so well by our President. It is a tough bill but there is no more room for laxity. Too much is at stake.

To many, it may seem strange that the toughest of our environmental legislation yet focuses on air quality. Other forms of pollution are far more apparent and seemingly widespread even to the layman. The issue here, however, is nothing less than the present and future health of our Nation. I, for one, feel that tough new approaches are not only justified but mandatory. And new toughness in other areas will, hopefully, soon follow.

We cannot delay. We cannot compromise. We must act. A more flexible approach to the problem was attempted in 1967 with the Air Quality Act. But we have learned much since then and all relevant evidence points to the conclusion that more stringent measures are essential. I support them. And I will support such supplemental measures that are reasonably required to implement the public policy expressed in this bill.

I know there has been considerable pressure to allow more flexibility in certain provisions of this bill. The time for flexibility is gone. Four years ago, the Senate passed a very flexible law for air quality. Yet today, industry and citizens dump 200 million tons of pollutants into the atmosphere each year. For the 4 years of operation under the Air Quality Act, this cannot be seen as a reduction in levels of pollution. In many areas, the levels of pollution have actually increased. Flexibility has run its course. Now we must act.

These words are not a condemnation of American industry or of our way of life. Rather, these words and the legislation of which I speak are a reaffirmation of traditional American ideals.

American industry and the American people always have manifested a profound capacity to respond to a challenge clearly stated in terms of national need. This bill states such a challenge. And I believe that the American people and our industry can meet it. We must recognize that the challenge is real, tangible, and of

imminent importance to the continued welfare of our Nation.

I am sure the Senate will respond. The course will be hard. Yet we have risen to such challenges before. The American people had only glimpsed the potential of our technology in 1960 when President Kennedy proposed that we land a man on the moon in a decade. Yet we did it. And we managed to beat the timetable by over a year. The present challenge poses the same conceptual dilemma. Much technology needs to be developed in our quest for air quality. I feel that it will be, and I ask that all Americans share that faith as they share the effort.

I would like to add my praise at this time to my colleagues, led by the distinguished Senator from Maine (Mr. MUSKIE) for their tireless efforts in writing this legislation. This bill, as Senator MUSKIE has said, is not partisan legislation or liberal legislation. It should be noted that the committee that reported this bill included men reflecting all philosophies and points of view. And these men reported this bill unanimously to the Senate.

It should also be noted that our President, Mr. Nixon, has played a major role in the development of this bill. The administration submitted legislative proposals that formed the basis for much of this legislation. Some of the proposals were kept, some changed and many more were added by the committee, yet the President deserves credit for his leadership and open-mindedness in providing the support of his administration for a strong and comprehensive bill.

As written, this legislation would provide the mechanism for a large-scale attack on this Nation's air pollution problem by:

First. Requiring designation of major air quality control regions within 90 days.

Second. Setting procedures to achieve air quality standards that would insure the protection of health. After standards and goals are set, the States will have 9 months to develop a plan to implement the standards.

Third. Requiring that implementation plans be designed to achieve conformance with air quality standards within 3 years.

Fourth. Allowing States to adopt even stricter air quality standards than those set by the Federal Government.

Fifth. Authorizing regulations to require that new industries meet emission performance standards based on the latest control technology, processes, and operating methods.

Sixth. Providing for civil—$10,000—and criminal—up to $50,000 and 2 years—penalties for violations and authorizing pollution abatement orders.

Seventh. Requiring that national emission standards also apply to vessels and aircraft and providing that 1975 model cars must achieve at least a 90-percent reduction in polluting exhaust from the 1970 standards. Penalties would range up to $10,000 per vehicle.

Eighth. Requiring a warranty of 50,000 miles on a vehicle's emission system performance and authorizing the Secretary of Health, Education, and Welfare to have cars road tested and recall those produced if they do not meet standards.

Ninth. Authorizing certification of low-emission vehicles for research and development purposes and for Federal acquisition of such vehicles for demonstration purposes.

Tenth. Authorizing $125 million in research for fiscal 1971, $150 million for 1972, and $175 million for 1973

for research relating to fuels and vehicles.

Eleventh. Providing 3-to-1 funding to States and providing for the option assignment of Federal personnel in place of cash grants.

Twelfth. Permitting citizens to file suits to enforce standards.

Thirteenth. Authorizing $725 million for 3 years for enforcement, grant assistance, and administration.

Fourteenth. Establishing an Office of Noise Abatement and Control within the Department of Health, Education, and Welfare.

I repeat, this is a strong bill. It attacks in forceful manner such problems as ambient air standards and interjurisdictional problems. The result is worthy of full support and strong timely enforcement. It is my hope that Americans will familiarize themselves with the terms and far-reaching philosophy of this legislation. The task now is to transform the language into reality and into air that we can all share in good health and common gratitude.

Mr. GRAVEL. We can all be grateful, Mr. President, for the committee's able and lucid report on this complicated and desperately needed bill, which I have the honor to cosponsor. However, I would like to take this opportunity to raise one objection to the treatment in the report of the growing radioactive hazard to our environment.

In discussing section 115, the committee did not specifically cite man-made radioactivity as a "hazardous air pollution agent" for which the secretary should immediately consider prohibiting release. Yet the phrase, "hazardous to the health of persons" as defined in paragraph 7B of that section most certainly would apply to man-made radiation as well.

The Council on Environment Quality stated in its first report that "radiation is potentially a more dangerous pollutant to man than pesticides." Yet, the com-

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mittee report—page 18—still puts pesticides and radioactive substances side-by-side.

For 25 years we have recognized a link beween radiation and both cancer and genetic mutations.

Recent calculations indicate that cancer might increase 10 percent if we all were to receive chronic radiation even at the low levels presently permissible. Fortunately, we are not yet receiving the permissible dose. This is one area where we still have the chance to prevent such an environmental tragedy.

Even the most conservative scientists in the current debate over radiation acknowledge that radiation is two to three times more powerful at producing cancer than they thought just 10 years ago.

It should be remembered, when we consider the meaning of the phrase "hazardous to health," that a single "hot particle" of radioactive plutonium lodged in the lung is capable of causing a lethal cancer. Furthermore, although there are 50 trillion cells in our bodies, it takes only one single cell, smashed by radiation, to cause a malignancy.

There is no doubt whatsoever that radiation damages human cells. New instruments have made it possible to observe broken and damaged chromosomes inside the cells. As an Alaskan I am particularly concerned that these observations have been made on Eskimos whose doses of radiation from fallout were below the present guidelines used by the Atomic Energy Commission. Chromosomes, of course,

carry the genetic heritage of the human race.

AEC experts, plus the few independent experts in the field of radiation, all agree that we must assume no amount of radiation is so low that it is harmless. With regard to genetic damage, the AEC says it quite simply in one of its booklets called "the genetic effects of radiation." "There is no safe amount of radiation as far as genetic effects are concerned."

The Nobel-prize winner, Dr. Joshua Lederberg, recently stated that, if we all were to receive the presently permissible dose of radiation, we could expect a 10-percent increase in the human mutation rate.

Obviously, the "hazard to health" presented even by very low doses of radiation is staggering—since 25 percent of all human diseases and illnesses have a known genetic component, and that does not mean just obscure diseases; that includes the Nation's No. 1 killer: Heart disease.

Dr. Lederberg estimates the cost of the extra medical care generated by a 10-percent increase in the mutation rate would be about $10 billion a year in a country of 200 million people.

Further, he explicitly warns that we must not wait to deal with radiation until we can observe our disease-rate and mental damage growing:

> A level of risk that approaches the intolerable, once we are well aware of it, may be impossible to verify by direct measurements of disease diffused throughout the population. In exceptional circumstances, an effect like the peculiar malformations induced by thalidomide comes to the surface, and then achieves a *visibility* and notoriety all out of proportion to other agents. If the malformation induced by thalidomide were a mental retardation of ten percent of the I.Q. instead of a highly characteristic and unusual deformation of the limbs, in an equal number of subjects, we would be *unaware* of it to this day.

The urgency of prohibiting further emissions of radioactivity to our air and water now, not 5 years from now, becomes even more striking when we realize that more than 100 radioactive powerplants are already in preparation in 28 States, and that the AEC expects to license another 400 or 500 within the next 30 years.

Each 1,000 megawatt nuclear powerplant will produce, every year that it operates at 75-percent capacity, as much radioactivity as the explosion of several hundred Hiroshima-size bombs. That could mean the equivalent of 250,000 bombs every year, if there were 500 plants operating.

Their waste will have to be contained at the plant, during transportation, at the fuel-cleaning plants, and during processing for perpetual storage.

Complete containment would have to be assured at every step of the way, and no accidents. Even 1-percent leakage in the annual total would mean a 2,500 bomb equivalent.

The nuclear industry is saying that it is expensive, but technically feasible, to design zero-release nuclear powerplants.

My position is that nuclear malfunctions, which are frequent, and accidents, which will occur with unknown frequency, will give us quite enough additional radiation without accepting any routine releases at all.

The AEC is trying to calm the public, so it compares the present level of routine releases of manmade radiation with levels of natural radiation, from the rocks and the stars. The nuclear industry even sponsored a 2-page advertisement to that effect in Newsweek, September 21. The trouble is: "Two wrongs don't make a right."

Natural radiation is also lethal. It is true that the levels of natural radiation are still higher than the levels from a technology just emerging from its infancy. Is that any comfort,

when nuclear technology is being designed under standards which would permit the tripling of our natural dose?

In the face of the obvious failure of environmental dilution to render DDT, mercury, lead, and automobile exhaust harmless, there is something pathetic—and frightening—about current AEC assurances that dilution will take care of radioactive emissions. The fact is that radioactive substances are known to reconcentrate in the animal chain to over 1 million times their initial concentration in the radioactive effluent.

With a matter as hazardous as radioactivity, we simply cannot count on dilution alone. Instead, we must consider steps to prohibit and prevent releases of man-made radioactivity.

Under section 115 of this bill the Secretary of Health, Education, and Welfare will have the power to control standards for emission of hazardous air pollution agents. Certainly he should use that power to force those who are proposing admissible levels of radioactive contamination of our air to prove in public hearings—if they can—that radioactive agents are not hazardous to the health of human beings.

I am a firm believer, Mr. President, in the goal of a zero level of acceptable man-made radioactive pollution of our environment. Those who propose anything less should be required within the terms of this legislation to justify their plans before the American people.

The PRESIDING OFFICER. Do Senators yield back the remainder of their time?

Mr. MUSKIE. I yield back the remainder of my time.

Mr. GRIFFIN. I yield back the remainder of my time.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass?

The yeas and nays have been ordered, and the clerk will call the roll.

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The result was announced—yeas 73, nays 0, as follows:

* * * * *

So the bill (H.R. 17255) was passed.

Mr. MUSKIE. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. BOGGS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of Senate amendments to H.R. 17255 and that the bill be printed as it passed the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent that S. 4358 be postponed indefinitely.

The PRESIDING OFFICER. Withoupt objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask unanimous consent that an article which appeared in the Louisville, Ky., Courier-Journal and Times, discussing the role of the distinguished Senator from Kentucky (Mr. COOPER) in this matter, be printed in the RECORD.

There being no objection, the article was ordered to be be printed in the RECORD, as follows:

POLLUTION SHOWDOWN: COOPER AND COMPANY VERSUS DETROIT

(By Leonard Pardue)

WASHINGTON.—The Senate Public Works Committee, which seems an unlikely dragon-

slayer, has aimed its lance at the stoutly armored automobile industry, and the battle will be joined this week.

The committee, whose senior Republican member is Sen. John Sherman Cooper of Kentucky, has proposed that the industry be required, by Jan. 1, 1975, to start producing cars that don't pollute the air with their exhausts.

The industry has responded that it cannot meet the deadline. It casts doubt on its ability to invent effectively anti-pollution devices that quickly and, beyond that, stresses the difficulty of rapid alteration of production lines.

The committee's weapon is a bill it has endorsed that would rewrite federal air pollution-control procedures. The measure is scheduled to come before the Senate this week, probably tomorrow.

The contest pits the nation's largest industry against a committee that has traditionally devoted much of its time to building highways and dams and to improving navigation facilities on rivers and in harbors.

Those preoccupations have had to yield in recent years, first to responsibility for water pollution-control efforts (because of the committee's concern with waterways) and then to attempts to clean up the nation's air.

"This committee used to be rather staid in its jurisdiction," said Sen. Cooper in an interview last week. "Suddenly we find ourselves in charge of most of the environmental questions."

As Cooper sees it, the committee came to its conclusions about the need for a deadline for Detroit because there are so many cars and they have so much to do with air quality.

"This is the major factor of pollution. Every effort must be made to correct it," he said.

The bill would simply require that cars produced after the beginning of 1975 emit 90 per cent less pollutants than federal standards permit for 1970 models. In effect, that means a pollution-free automobile.

Cooper gave these two specific arguments for setting the 1975 deadline:

"If you don't fix these standards, you won't get the maximum effort on the part of the companies to meet them." In other words, the committee believes necessity will be the mother of invention.

Delay in producing a nonpolluting car raises the possibility that there will be "further degrading of the air." Cooper pointed out that the 10-year average life of a car means it will take a decade for the full impact of the pollution-free car to be felt. "We have all these used cars—they're practically hopeless" in terms of pollution control, he said.

The committee isn't really sure the auto industry can meet the deadline. "I don't suppose anyone knows exactly whether they can make it or not," Cooper says.

A provision of the committee's bill would permit the secretary of health, education and welfare or the courts to extend the deadline a year, if the industry could show the impossibility of meeting the 1975 requirement. Cooper put forward that part of the bill—in the interest, he said, of offering the industry recourse to the courts as a matter of due process of law.

Another ameliorating part of the bill, from the manufacturers' standpoint, would permit the auto companies to share their technological advances in the pollution field without running afoul of federal anti-trust laws.

The committee appears to have come to its decision to seek a deadline partly because of its conclusions about antipollution requirements for factories and power-generating plants.

That section of the bill would completely reorganize the current federal approach toward state and regional pollution-control programs.

The HEW secretary would be required to establish national clean-air standards that limit pollutants to amounts safe for the health of persons. States and interstate pollution-control regions (such as the one encompassing the metropolitan Louisville area) would have to write plans to achieve those stands. They would have to restrict pollution to whatever extent necessary to bring about air that is safe to breathe.

The bill, in fact, gives implicit sanction to such local actions as forbidding an industry to locate in an area if its exhausts would damage air quality, or restricting traffic in certain areas, if that would help clear the air. It does this by saying that implementation plans properly may include "land-use and transportation controls and permits."

The bill sets out specific timetables for each of the steps involved in setting national standards, adopting local plans, and achieving the goals. The schedule proposed in the bill would mean that in about 4½ years, the air everywhere should be at least as clean as the national standards say it should be.

This concept of requiring clean air by a specific date was advocated most forcefully in the committee's deliberations by Senator Thomas Eagleton, D-Mo. He is a member of the subcommittee on air and water pollution, as is Cooper.

Sen. Edmund Muskie, the Maine Democrat who is subcommittee chairman, draws most of the credit as author of the legislation, but it was Eagleton who confronted officials of the National Air Pollution Control Administra-

tion, during a hearing, with the question of a specific deadline.

Dr. John T. Middleton, the agency's director, said the law ought to allow "a reasonable time" for compliance, particularly since all the technical devices for controlling exhausts don't yet exist.

"I am trying to force the state of the art" of pollution control, Eagleton replied.

He also argued that it would be inconsistent to write legislation to attain clean air without guaranteeing that the goals would be met by a certain date.

That thinking prevailed, and "the concept of deadlines runs throughout this bill," says Bailey Guard, Cooper's chief aide on the committee.

While Guard insists that the sections of the bill regarding national clean-air standards and local efforts to meet them are of utmost importance, it is the timetable for the auto industry that is receiving most of the attention.

"Detroit is complaining bitterly," Guard said, gesturing toward some telegrams and letters on a table in his office. Already local auto dealers in Kentucky have mobilized to send wires to Cooper to protest the bill.

Cooper in a sense acknowledges that they have reason to complain. He calls the committee's stand "a hard position"—one that will cost auto companies "large sums of money" for research; that may result in "higher costs for motor cars"; that may force manufacturers to "revolutionize their propulsion systems."

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There are critics of the internal-combustion engine (most notably the Ralph Nader task force that studied air pollution) who think some substitute must be found.

The bill, in fact, would increase federal funds for research into other propulsion methods, such as steam and electricity, but this is an effort that Detroit welcomes. One industry witness before Muskie's subcommittee said he is confident the research will show there is no feasible alternative to the internal-combustion engine.

Should the industry fail to develop a clean gasoline-burning engine in time for use in 1975 or '76, and should no alternate engine be available, the thinking is that Congress might then change the law, relaxing the pollution requirements or giving the industry more time to meet them.

"Recourse to the Congress is always there," Cooper said. Muskie has taken the same view.

So the stage is set for this week's debate on the future of the auto industry and the future of the air we breathe.

Cooper believes the Senate is likely to approve the committee's bill. It would probably then wind up in a Senate-House conference committee, where its fate is difficult to predict. However, some clean-air bill must be approved this year, because the current law expires.

In any case, it is perhaps a measure of the depth of the national air-pollution problem that moderate men like Cooper and Sen. Jennings Randolph of West Virginia, the Public Works Committee chairman, have come to support such rigorous action.

"We spent God knows how many hours going over the bill line by line, all of us learning all the time," Cooper said. "If this is successful, it will have a tremendous effect on reduction of air pollution, there's no question about that."

Mr. MANSFIELD. Mr. President, once again the Senate has witnessed one of those rare legislative achievements under the leadership of the Senator from Maine (Mr. MUSKIE). By the passage of this bill, the most far-reaching hope of achieving the goal of a pollution-free atmosphere comes closer to realization. His mastery of the subject matter and the brilliance of his presentation are reflected in the unanimity of the vote. Some would classify this bill as the strongest, the toughest, the most far-reaching. I can only say that it is the best. I know of the long hours, of the many meetings required under the leadership of Senator MUSKIE to bring about this achievement. To Senator MUSKIE and his entire subcommittee, the country is indebted.

I wish to pay special tribute to the ranking Republican member of his subcommittee, the able Senator from Delaware (Mr. BOGGS). His cooperation and assistance, advice and contribution are so indelibly impressed in every phase of this measure.

To the chairman of the full committee (Mr. RANDOLPH) and the ranking member of the full committee (Mr. COOPER), the Senate owes a special thanks for their efforts in bringing about this achievement.

To the Senator from Kansas (Mr.

DOLE) and Kentucky (Mr. COOK) and the Senators from Michigan (Mr. HART and Mr. GRIFFIN) and the Senator from Florida (Mr. GURNEY), their cooperation with the leadership and contributions to this debate are greatly appreciated.

The Senate as a whole can be justly proud of its record in the enactment of this bill.

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1.1k(4)(c) Dec. 18: Senate and House agreed to conference report, pp. 42381–42395; 42519–42524

CLEAN AIR AMENDMENTS OF 1970—CONFERENCE REPORT

Mr. MUSKIE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 17255) to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air.

I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. EAGLETON). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

(For conference report, see House proceedings of Dec. 17, 1970, pp. 42283–42294, CONGRESSIONAL RECORD.)

Mr. MUSKIE. Mr. President, it is with considerable satisfaction that I report to the Senate that the Senate conferees on the Clean Air Amendments of 1970 have returned, just in time for Christmas, with the package ordered unanimously by the Senate on September 22.

This was a long conference with the House conferees. There were many points at issue, many provisions in the Senate bill which were not considered at all by the House committee or by the House, nor reflected in the House version of this bill. The conferees worked long and hard on resolving these differences and dealing with the House problem of including in the bill provisions which the House had not considered. I think that what we have is a tough bill.

I commend to all of my Senate colleagues the result of the conferees' painstaking efforts over the past 3 months. It is a strong, tough, air pollution control agreement. It will enable the country to clean up the air and protect the public health.

The conferees' agreement, no less than the Senate bill, intends that all Americans in all parts of the country shall have clean air to breathe within the 1970's.

The conferees' agreement, no less than the Senate bill, carries the promise that ambient air in all parts of the country shall have no adverse effects upon any American's health.

The conferees' agreement, no less than the Senate bill, faces the air pollution crisis with urgency and in candor. It makes hard choices, provides just remedies, requires stiff penalties.

The conferees' agreement, no less than the Senate bill, calls for the money and the manpower required to clean up the air. A threefold increase in manpower and a total of $1.1 billion in funding over 3 years are authorized.

Mr. President, I am convinced that nothing short of this kind of commitment to the fight against dirty air, against environmentally induced disease, will be enough.

That is why I am greatly encouraged by the support given to this legislation by the Senate and House conferees, and I am particularly grateful

to each of them for his contributions to our work during these 3 months.

Let me now review briefly where we were in September, what we had learned from our experience with the existing law, what we felt was needed for a successful effort to obtain clean air and to protect public health, and what the conferees accomplished.

There was little doubt in the Senate, in September, that the country was facing an air pollution crisis. Cities up and down the east coast were living under clouds of smog and daily air pollution alerts. More than 200 million tons of contaminants were being spilled into the air annually.

The costs of air pollution were being counted in death, disease, and disability. The National Institute of Environmental Health scientists estimated the cost of environmentally induced disease at $38 billion a year. A 50-percent reduction in urban air pollution, it was estimated, would result in a saving of $2 billion a year in health care costs.

It was clear that the country was falling behind in its struggle for clean air. Automobiles were putting out 64 percent of the carbon monoxide and 50 percent of the hydrocarbons. Two steel companies in the Chicago area spilled 3,500 more tons of pollutants into the air in 1968 than they had spilled in 1963.

It was clear, too, that the new legislation then being considered would have to go beyond the limited objectives of the Air Quality Act of 1967. Senators will recall that the 1967 act was drawn to enhance air quality, to reduce harmful emissions, and to "give the Secretary authority to implement that objective in the absence of effective State and local control."

The 1967 act established procedures for the achievement and maintenance of federally approved regional standards of ambient air quality. These standards, based on Federal criteria documents describing the effects of pollutants on health and welfare, are adopted and enforced on the State and local level. In the event that adequate standards are not developed or enforced, the Federal Government assumes the responsibility.

The underlying wisdom of the original legislation was confirmed. We learned from the criteria documents issued for five pollutants that more decisive action must be taken. We learned from the standards-setting process that public participation is important. We learned from experience with implementation of the law that States and localities need greater incentives and assistance to protect the health and welfare of all people.

The effectiveness of existing law depends in great part on the willingness of people to make tough decisions concerning the quality of air they want to breathe. It depends on their willingness to make their wishes known in public hearings on the local level.

This experiment in public participation worked. People became involved in the standards-setting process. They learned of the threats to their health and they sought to make the program responsive to their needs.

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From citizen concern and corporate resistance, we learned that air pollution is more severe, more pervasive and growing faster than we had thought. Unless we recognized the crisis and generated a sense of urgency, national lead times to find and apply controls measures could melt away without any chance for a rational solution to the air pollution problem.

It is also clear that ambient air quality standards which will protect the public health must be set as minimum standards for all parts of the Nation, and that they must be met in all areas within national deadlines.

Congress adopted emissions standards as the basic control technique for moving sources in 1965, because they

are not controllable at the local level. Here we learned that tests of economic and technological feasibility applied to those standards compromise the health of our people and lead to inadequate standards.

In 1963, the Congress recognized that the Federal Government could not handle the enforcement task alone, and that the primary burden would rest on States and local governments. However, State and local governments did not respond adequately to this challenge. Enforcement had to be toughened. More tools were needed. The Federal presence and backup authority had to be increased.

Finally, no level of government has implemented the existing law to its full potential. On all levels, the air pollution control program was underfunded and undermanned. Greater financial commitments had to be made and met at all levels.

With these lessons in mind last September, the Senate laid down in its bill five sets of requirements for tougher standards and tighter enforcement against air pollutants and air polluters.

First, the bill provided for national ambient air quality standards for at least 10 major contaminants that must be met by national deadlines. This meant that in every region of the country, air quality had to be better than that level of quality which protects health.

Second, national air quality goals —protective against any known or anticipated adverse environmental effects were to be set for the major pollutants and had to be achieved within specific time frames on a regional basis. These goals were especially important because some pollutants could have serious effects on the environment at levels below those where health effects occur.

Third, the bill provided that newly constructed sources of pollution had to meet rigorous national standards of performance. While we cleaned up existing pollution, we were determined to guard against new problems. Those areas which have levels of air quality better than the national standards should not find their air quality degraded by the construction of new sources.

Fourth, the bill provided the Administrator authority to prohibit emissions of hazardous substances. The committee had received strong evidence that any level of emissions of certain pollutants might produce adverse health effects that could not be tolerated.

Fifth, the bill provided the Administrator with the authority to set emission standards for selected pollutants which cannot be controlled through the ambient air quality standards and which are not hazardous substances. These pollutants could later be covered by either ambient air quality standards or by prohibitions as hazardous substance.

The Senate also recommended significant changes in title II of the act dealing with moving sources, and especially with automobiles.

In 1968, moving sources were responsible for more than 42 percent of the total emissions of the five major pollutants.

In health effects, these pollutants mean cancer, headaches, dizziness, nausea, metabolic and respiratory diseases, and impairment of mental processes. Clearly, solving the air pollution problem depended on the achievement of significant reductions in the emissions from automobiles. Clearly, protection of the public health required quick and drastic reductions.

Since legislation to deal with the problem of automotive emissions was first introduced in 1964, the industry had known that they would have to develop the solutions to the problem. In 1965 they announced that national

standards could be met in the fall of 1967.

It was clear that continued reliance on gradual reductions in automotive emissions would make achievement of the ambient air quality standards impossible within the national deadlines established in title I of the Senate bill. More important, it would continue hazards to health long after they should have been eliminated.

In order to maintain those standards set under title I—standards which are necessary to protect the public health and which must be met in the next 5 years—the emissions standards for carbon monoxide, hydrocarbons, and nitrogen oxides which have been projected for 1980 had to be met earlier. The bill required that this be done by 1975.

To insure that production line vehicles perform adequately, the Senate bill required that each vehicle manufactured comply with the standards for a 50,000 mile lifetime. The manufacturer was required to warranty the performance of each individual vehicle as to compliance with emission standards.

The Senate in setting the 1975 deadline made every effort to make that requirement consistent with what the industry had testified on many occasions over the years: It provided 2 years for research and development of the necessary technology, and 2 years to apply that technology in the mass production of vehicles.

In response to claims that these requirements could be met, the Senate included in the legislation an opportunity for an administrative review of the 1975 deadline. A 1-year extension would be necessary and justified. The bill also provided for a review of that decision by an appellate court.

The Senate was aware of the problems these requirements might create for individual companies. Therefore, the bill provided a procedure for mandatory licensing which would make available patents necessary to achieve compliance to any manufacturer who could show a need and to whom the information was not otherwise available. This provision was also applied to stationary sources.

Predictions of technological impossibility of infeasibility were not considered sufficient reasons to avoid tough standards and deadlines, and thus to compromise the public health. The urgency of the problems required that the industry consider, not only the improvement of existing technology, but also alternatives to the internal combustion engine and new forms of transportation. Only a clear cut and tough public policy could generate this kind of effort.

The third major area in which the Senate recommended significant changes is the area of enforcement. Standards alone would not insure breatheable air. All levels of government had to be given adequate tools to enforce those standards.

The Senate remains convinced that most effective enforcement of standards would take place on the State and local levels. It was here that the public could participate most actively and bring the most effective pressure to bear for clean air.

Public participation is still important in the development of each State's implementation plan. These plans do not involve technical decisions; they do involve public policy choices that citizens should make on the State and local level. They should be consistent with a rational nationwide policy and should be subject to the approval of the Administrator.

However, the powers to enforce these standards had to be increased for the State and local governments as well as the Federal Government. The bill thus required adequate State enforcement authority as a part of implementation plans and provided that abatement orders could be issued

by the Administrator or his representative. Violations of these orders were to be punishable by statutory penalties of as much as $25,000 for each day of a first violation.

The bill also provided the Federal Government with the authority to use the influence of the Federal contract as an incentive to compliance with standards.

Federal contracts could be awarded only to facilities which were in compliance with the standards and requirements of this act.

The bill extended the concept of public participation to the enforcement process. The citizen suits authorized in this legislation would apply important pressure. Although the Senate did not advocate these suits as the best way to achieve enforcement, it was clear that they should be an effective tool.

Mr. President, those were the basic and principal portions of the package taken by the Senate conferees to the first meeting with the House conferees on October 8. On several of those points, the House bill was silent. I ask unanimous consent to include in the RECORD at the end of my remarks a summary of provisions of the conference agreement.

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I ask unanimous consent that a discussion of the key provisions of this agreement and the implications of those provisions be included immediately following the summary.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MUSKIE. I have no doubt that this legislation, like its predecessor, will be subject to criticism. Already the auto industry has indicated it is unacceptable. Others will focus on its limitations and still others will find fault for political purposes.

That is the democratic process. It is not in the public interest that all critics be satisfied. But false implications are not needed. This is not a political measure—it had unanimous support from the Senate conferees—some of whom had differing views on specific language but all of whom knew that a public demand needed a stern response.

One issue on which there will be repeated interpretation and misinterpretation involves the deadline for achievement of emissions standards for passenger cars. The Senate did not get all that it wanted here. The Senate conferees had to accept two major changes in order to preserve the deadlines in the Senate bill and to obtain conference agreement.

First, the House insisted that an application for suspension from the effect of the deadline must be made earlier than 24 months before the effective date of the standard in question.

Second, the administration is required to make this decision within 60 days after receipt of such an application for suspension.

Conversely, two improvements were made. First, the Administrator no longer can be forced to rely upon the auto manufacturer to determine whether technology is available. He must test engine systems developed by private parties to ascertain whether they meet standards; thus, all available technology will be known. When a breakthrough occurs, the administration will know, and standards can be toughened even beyond the degree of control required by this statute.

Let me say, with respect to the conference agreement as it relates to the Senate agreement, that the Senate did not get all it wanted. It was necessary to compromise. Yet, in many instances, the compromise resulted in a stronger bill than either the Senate or the House bills. The key decision, the one on which the committee focused most over the past few months, was the deadline for the cleanup of the

internal combustion engine in the passenger automobile.

The deadline has been retained. That deadline is January 1, 1975, for carbon monoxide and hydrocarbons, and January 1, 1976, for oxides of nitrogen. I repeat, that deadline has been retained.

The Senate bill provided, in addition, the possibility of an extension of 1 year beyond each of the deadlines. The limitation of a 1-year extension has been retained without change, except for the fact that the judicial review provisions of the Senate bill have been eliminated.

There has been one change made, upon House insistence. The date for applying for that 1-year extension of the deadline has been advanced by 1 year.

Mr. President, the Administrator would make the decision on whether an additional year should be granted on the basis of a review of the National Academy of Sciences on technological developments in the field as well as other information available to him. If the Administrator decides the deadline cannot be met, he must impose interim standards, achieving as high a level of emission control as technological developments permit. This advances the date for applying for the 1-year extension by 1 year, but no further extension is possible.

May I say that, in my judgment, the pressure is on the automobile industry. The deadline of 1975 and 1976 is still in the law, and only Congress can change it.

If the review procedure is followed and results in an extension, the maximum extension permitted for the 1 year as was the case in the Senate bill. Any extension beyond that can be provided only by action of Congress. That has not been changed by the conference agreement.

I think the action we have taken on the automobile deadline is a reasonable compromise, in light of the fact that the House bill contained nothing of the sort in its legislation. The House moved, I think, close to 100 percent toward the Senate provision. In other respects, the Senate bill is, I think, as tough now, following the agreement with the House, as it was when it left the Senate Chamber.

Other important features of the Senate bill were retained. Each individual manufacturer must, if suspension of the deadline is considered essential, apply to the Administrator and make the necessary showing. This means that the lack of technology or the leadtime to the smaller companies cannot be used as a justification for suspension by the major manufacturers.

Further, the companies must provide the Administrator with the information needed to judge their technical capability. The Administrator should require periodic reports on the progress of technology from each company —such reports and comments thereon should be a part of the report the Congress required by this section.

As in the Senate bill, the Administrator retains certain discretionary authority. He must, for example, prescribe the actual standard which the automobile must achieve to meet a 90-percent reduction from 1970–71 vehicle emission levels.

This technical judgment could be viewed as a way to vitiate the effect of the deadline by adjusting the measurement technique. This has been done once this year. Before the Senate completed action on this bill and before the decision to write a statutory standard for motor vehicles, the National Air Pollution Control Administration proposed a new measurement technique for vehicles. The new technique had the effect of increasing the allowable emissions for 1970–74 passenger cars. By the seemingly simple method of revising the base on which standards were calculated—new technology made pollutant quality and

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quantity easier to measure—the amount of allowable pollutants was increased.

The conference committee was aware of the potential for adjustment. The conference agreement mandates that measurement techniques be determined within 6 months after enactment. Should the base be adjusted again; that is, should a new measurement technique be adopted for carbon monoxide and hydrocarbons so as to increase the amount of emissions and thus alter the circumstances on which our judgment has been made, oversight hearings, and if necessary, corrective legislation will be the result.

Mr. President, this legislation is the product of an effort which involved many people over an extended period of time. The members of the Senate Committee on Public Works and their staffs deserve particular praise. Our hearings were numerous and there were more executive sessions. The members were patient, attentive, cooperative, and not partisan.

Chairman RANDOLPH and Senator COOPER, both of whom sit with the subcommittee, helped guide the bill through the full committee. Senators BOGGS, BAYH, MONTOYA, SPONG, EAGLETON, BAKER, and DOLE worked long hours on this bill and the final version represents their individual commitments to the goal of a clean environment.

Mr. President, there were many conferences with the House Committee on Interstate and Foreign Commerce. The chairman, HARLEY O. STAGGERS of West Virginia, who served as chairman of the conference, guided the legislation well. His constant reminder of the need to get a good, strong, reasonable bill helped maintain our determination. Representative PAUL ROGERS of Florida provided key proposals to break deadlocks and Representatives JOHN JARMAN, BILL SPRINGER, and ANCHER NELSEN worked diligently and patiently to formulate the compromise. The House conferees were ably and faithfully assisted by Kurt Borchardt and Bob Nordhaus, and without their cooperation with the Senate conferees' staff, this bill could never had been produced.

In conclusion, Mr. President, I want to emphasize again that committing the Congress with this legislation cannot be, and will not be, enough. In this Chamber, we can make promises to provide the funds and the manpower necessary to set and enforce the standards. That is not enough. We must carry our commitment through to the appropriations of those funds.

This program requires a commitment not only from the Congress and the Executive. It also requires a commitment from the people. And from all of us, it requires a new perspective. We all must recognize that the quality of our air is most valuable, most essential, to the quality of our environment and to the quality of our lives upon this planet.

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EXHIBIT 1

SUMMARY OF THE PROVISIONS OF CONFERENCE AGREEMENT ON THE CLEAN AIR AMENDMENTS OF 1970

STATIONARY SOURCES

Air quality control regions: The agreement provides that areas of states not designated will be considered as air quality control regions and provides authority for Administrator to designate interstate region.

Air quality criteria and control techniques: The agreement requires issuance of remaining air quality criteria for major pollutants within 13 months of date of enactment.

National ambient air quality standards: The agreement establishes procedures for setting primary national ambient air quality standards to protect public health and secondary national quality standards necessary to protect public welfare. following promulgation of the standards (four months after issuance of criteria), the States will have nine months to develop and to adopt, after public hearings, a plan to implement the primary standards. Additional time will be provided to set implementation plans for secondary standards.

Implementation plans: The Administrator has six months to approve a submitted implementation plan or if no plan is submitted or the plan is inadequate, to substitute a plan of his own. The plan must be designed to achieve the level of air quality established by the primary standard within three years, and must include a description of steps which will be taken, including transportation and land use controls, emission requirements, and other enforcement procedure.

State standards: The agreement enables the State or local subdivision to adopt air quality emission standards that are stricter than the national standard.

New source performance standards: The agreement authorizes regulations to require that new major industry plants such as power plants, steel mills, and cement plants achieve a standard of emission performance based on the latest available control technology, processes, operating methods, and other alternatives.

Hazardous substance emissions: The agreement requires the administrator to regulate emissions of pollutants found to be hazardous to health.

Federal enforcement: The agreement prohibits its violation of any air quality implementation plan, emission standard, etc. It provides criminal penalties and the authority to issue abatement orders. The agreement requires record keeping, authorizes subpoenas, requires emission monitoring, and authorizes right of entry.

Federal Facilities: The agreement requires Federal facilities to control air pollution.

Moving sources: Standards—The agreement requires emission standards based on protection of public health and welfare without regard to the propulsion system and provides that the 1975 model cars must achieve at least a 90% reduction from emissions of the 1970 models. This would approximate the 1980 standards projected currently for automobiles. The agreement prohibits violation of standards.

Aircraft emissions: The agreement provides for regulation of aircraft emissions and Federal preemption of authority to regulate such emissions. Aviation fuels regulation is authorized also.

Penalties: The agreement sets penalties of up to $10,000 per vehicle and provides authority to seek injunctions against violators.

Certification: The agreement authorizes the Administrator to test any new vehicle submitted for certification for compliance with standards and authorizes certification for a year. It also provides for production line testing of vehicles.

On the road testing and compliance: The agreement requires warranty of 50,000 miles on emission system performance. The Administrator can test cars on the road, and can require recall if a representative sample fails the test.

State grants for vehicle inspection: The agreement authorizes 2–1 grants to the States for developing emission inspection systems.

Pre-emption: The agreement preempts State emission standard-setting authority, except for California.

Low emission vehicles: The agreement authorizes certification and purchase of Low-Emission Vehicles.

GENERAL

Research: The agreement authorizes $75 million for fiscal 1971, $125 million for fiscal 1972, and $150 million for fiscal 1973 research relating to fuels and vehicles. It authorizes research concerning the health effects of air pollution and authorizes an additional $15 million for long-term contracts to carry out these investigations.

State planning grants: The agreement provides 3 to 1 funding to states with a bonus now available only to interstate and intermunicipal programs; it also provides for the option of assignment of Federal personnel in lieu of cash grants.

Emergency powers: The agreement gives the Administrator authority to abate any pollution that presents an imminent and substantial endangerment to health.

Citizens suits: The agreement permits citizens suits to enforce violation of standards. Suits against the Administrator are limited to mandatory functions.

Federal contract compliance: The agreement prohibits the Federal Government from signing contracts with any company convicted of violation of air quality laws. The agreement authorizes the President to issue an executive order to provide uniform contract compliance language.

Judicial review: The agreement permits review of the standards, implementation plans, or other action taken pursuant to the Act.

Mandatory licensing: The agreement authorizes mandatory licensing of patents, on technology not otherwise reasonably available to facilitate compliance with provision of this Act.

Authorization: The agreement authorizes $650 million for three years for purposes other than Section 104.

Environmental policy: The agreement requires the Administrator to review any National Environmental Policy Act statements and major Federal actions and make his comments public.

Noise pollution: The bill establishes an Office of Noise Abatement and Control in the Environmental Protection Agency and authorizes $30 million to carry out functions.

DISCUSSION OF KEY PROVISIONS

Section 107–108. The conference agreement requires the designation of air quality control regions and the issuance of air quality criteria and control technique information within a statutory deadline. These are necessary administrative preconditions on which much of the rest of the agreement depends, and the conference committee felt it desirable to speed up their availability. Criteria have already been issued for five pervasive pollutants: sulfur oxides, particulates, carbon monoxide, hydrocarbons, and photochemical oxidants. Within the 13-month deadline, the Congress expects criteria to be issued for nitrogen oxides, fluorides, lead, polynuclear organic matter, and odors, though others may be necessary.

Section 109. Under section 109 of the agreement, national ambient air quality standards must be established, either within one month of enactment or simultaneously with any criteria issued. For each pollutant subject to a criteria document, there will be a primary ambient air quality standard, set at the level of air quality adequate to protect the public health, and a secondary ambient air quality standard to eliminate adverse effects on welfare.

Section 110. Section 110 requires each State to develop an implementation plan which assures the attainment of the primary ambient air quality region within three years from the date the plan is approved. The plan also must provide for reaching the generally more restrictive levels of air pollution of the secondary standards within a reasonable set time period and should be related to the difficulties with which a particular region is confronted.

With up to four months for the final promulgation of national standards, up to nine months for the States to develop their plans and up to four months for the Administration to either approve a State plan or decide to substitute his own authority in promulgating a plan, approval of plans for major pollutants is no more than 17 months away. Within four and one-half years, the level of air quality in American cities, as to these major pollutants, should be adequate to avoid adverse effects on public health.

In order to implement the national ambient air quality standards, these plans must provide for emission limitations on all services in the region covered by the plan, together with schedules and timetables of compliance, systems for monitoring both ambient air and emissions from individual sources, and adequate enforcement authority (including special provisions for air pollution emergencies). Implementation plans must provide that when adequate on-the-road motor vehicle emissions tests are developed, the State will have a system for periodic inspection. Federal grants are available to develop such inspection programs.

Implementation of standards will require changes in public policy: land use policies must be developed to prevent location of facilities which are not compatible with implementation of national standards. States must review the location of every new stationary source before construction to assure no interference with attainment of the standards.

Transportation policies must be developed or improved to assure that the impact of pollution from existing moving sources is reduced to the minimum compatible with the needs of each region. Construction of urban highways and freeways may be required to take second place to rapid and mass transit and other public transportation systems. Central city use of motor vehicles may have to be restricted. In some congested areas the number of operations of aircraft into an airport may need to be limited, or steps taken to reduce emissions while aircraft are on the ground. If such controls are required, the plan for implementation should so provide. If the plan is approved, the Congress expects the Federal regulatory agencies to take the steps necessary to assure compliance with the plan.

The conference committee was convinced that the Administrator of the Federal Aviation Agency would work closely with the States and the Environmental Protection Agency to attain these controls when necessary.

If, at the time of plan approval, it appears impossible to bring specific sources into compliance within three years, the Governor of the State may request an extension of the deadline up to two years. The Administrator must be satisfied that alternate means of achieving the standard have been considered (including closing down the source in question), that all reasonable interim measures will be applied, and that the State is justified in seeking the extension.

A Governor may also apply for a postponement of the deadline if, when the deadline approaches, it is impossible for a source to meet a requirement under an implementation plan, interim control measures have reduced (or will reduce) the adverse health

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effects of the source, and the continued operation of the source is essential to national security or the public health or welfare of that State. Such a postponement is subject to judicial review.

Section 111. The conference agreement, as did the Senate bill, provides for national standards of performance on emission from new stationary sources. Included under this section would be emissions from new or modified installations of major industries. These

sources, important in themselves and involved in industries of national scope must be controlled to the maximum practicable degree regardless of their location. Standards of performance must be set at the greatest degree of control attainable through the application of the best system of emission reduction which has been adequately demonstrated.

Sources for which the Congress would expect standards of performance to be established include:

Cement manufacturing;
Coal cleaning operations;
Coke byproduct manufacturing;
Cotton ginning;
Ferroalloy plants;
Grain milling and handling operations;
Gray iron foundries;
Iron and steel operations;
Nitric acid manufacturing;
Nonferrous metallurgical operations (e.g. aluminum reduction, copper, lead, and zinc smelting);
Petroleum refining;
Phosphate manufacturing;
Phosphoric acid manufacturing;
Pulp and paper mill oeprations;
Rendering plants (animal matter);
Sulfuric acid manufacturing;
Soap and detergent manufacturing;
Municipal incinerators; and
Steam electric powerplants.

Section 112. Under section 112, the Administrator must set emission standards for hazardous air pollutants, after public hearings on proposed standards. The standards must be set to provide an ample margin of safety to protect the public health. This could mean, effectively, that a plant would be required to close because of the absence of control techniques. It could include emission standards which allowed for no measurable emissions.

New sources of such pollutants may be constructed only if they meet the standards. Within two years, if installment of control equipment takes that long, existing sources must meet the standards, and during any relay in meeting the standards, alternate means must be used to protect the health of persons from imminent endangerment. Examples of substances which the Administration informed the Senate were likely to be controlled under this provision are beryllium, asbestos, mercury, and cadmium.

Section 113. Federal enforcement under section 113 leaves the primary responsibility with the States for enforcing requirements under implementation plans. The Administrator can issue an abatement order to a polluter or go to court seeking an injunction only after 30 days' notice to an individual polluter, or 30 days after notifying the State that the Federal Government is generally assuming enforcement powers in that State because of a widespread failure of States' enforcement. This gives States 30 days in which to take appropriate action themselves.

For Federal standards of performance for new sources and emission standards for hazardous air pollutants, the Administrator may enforce without delay by either issuing an order to abate or seeking an injunction in court. This authority may be delegated to States but the Administrator retains authority to act directly without notice to the State.

The conference agreement retains the existing abatement conference procedure for international pollution and for pollutants not subject to ambient air quality standards or emission standards for hazardous air pollutants. The effect of past enforcement actions is preserved.

Knowing violations of an order issued by the Administrator or of State implementation plan requirements (where the violator has received notice) or of Federal standards of performance for new sources or of Federal emission standards for hazardous emissions shall be punishable by a fine of not more than $25,000 per day of violation or by imprisonment for not more than 1 year. For second or subsequent violations, the fine is not more than $50,000 and imprisonment for not more than 2 years.

Section 114. The conference agreement grants authority to the Administrator or his authorized representatives to enter the premises of any emission sources, to require the owner or operator of any source to install and maintain emissions monitoring equipment (and to protect it against tampering), to require sampling of emissions, and to require records and reports. Violations of this provision are subject to restraining orders and knowing falsification of records, reports and other information required by this Act is subject to criminal penalties of $10,000, or imprisonment of six months, or both.

Section 202. The Administrator is directed to establish emission standards for pollutants from new motor vehicles or engines which are likely to endanger the public health or welfare. Such standards are to be applicable for the useful life of the vehicles or engines. The statute specifies that "useful life" shall be a period of use of at least five years or 50,000 miles, whichever occurs first. The effective date of the standards is to depend on the period necessary to develop the requisite technology, giving appropriate consideration to the cost of complying by such date.

Carbon monoxide and hydrocarbon emissions from light duty vehicles for 1975 model year and thereafter are to be reduced at least 90 per centum over 1970 standards for these pollutants. Oxides of nitrogen emissions from light duty vehicles for the 1976 model year and

thereafter are to be reduced by at least 90 per centum over the actual emission of these pollutants from 1971 model vehicles, which were not subject to Federal or State standards for such emissions.

Any manufacturer may apply to the Administrator within specified time limits for a one-year suspension of the statutory time limits, and the Administrator is to issue interim standards if he approves such application. Such interim standards are to reflect the greatest degree of emission control which is achievable by application of technology determined by the Administrator to be available. The Administrator is to take into consideration whether the manufacturer has met statutory requirements relating to public interest and public health and welfare, availability of technology, and good faith efforts to meet standards.

The Administrator is to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the feasibility of meeting statutory deadlines for the 1975 and 1976 model years. In entering into such arrangements, the Administrator is to request the Academy to submit its first report not later than July 1, 1971. The Administrator is directed to use all information-gathering authority granted to him to furnish to the Academy any information requested by it.

Section 207. The provisions for warranty of vehicle emission control systems or devices, contained in section 207 of the conference substitute, are among the most important in the Act. Standards for new cars will have little impact if we cannot assure compliance with those standards over the useful life of those vehicles. Testimony required by the Committee indicated significant deterioration from expected performance levels as between prototype models and production vehicles. According to information provided by the National Air Pollution Control Administration from the record of the Senate hearings:

"The production fleet data indicate that air quality in 1985 will be 25 percent higher in hydrocarbons and 13 percent higher in carbon monoxide than it would have been if there were no discrepancy in emissions rates. Oxidant concentrations are approximately a direct function of hydrocarbon concentrations, as indicated in the "Air Quality Criteria for Hydrocarbons." Thus the oxidant levels in 1985 will also be approximately 25 percent higher. This analysis is based on data gathered from 1968 and 1969 model year cars. To the extent that production fleet performance can be made to approximate prototype emissions more closely, in 1970 and later model years, the discrepancies in the projected curves can be reduced." (Volume 1, p. 372.)

This information, in addition to data which shows significant deterioration from the standard after a vehicle accumulates mileage, suggests that the investment in emission systems by the American public will be of no purpose and that the air quality objectives of existing and proposed legislation will have failed unless better performance is required.

The responsibility of the industry cannot stop at the factory gate. Without some degree of quality control which can only be assured through individual vehicle compliance, the motorists cannot be required to maintain emission performance—vehicle emission inspection programs will be meaningless—and air quality will not be maintained.

Conversely, by requiring the manufacturer to warranty performance, margins of safety will be built into each vehicle to insure better than required performance, systems will be designed to minimize deterioration, State vehicle emission inspection programs can cause proper maintenance to be observed by the motorists and the air quality objectives of this legislation will be implemented.

To achieve this, the conference agreement provides that motor vehicles be warranted by the manufacturer to comply with emission standards for 5 years or 50,000 miles. This performance warranty is in addition to a statutory warranty of freedom from defects in materials and workmanship.

The performance warranty cannot be enforced until the Administrator establishes methods for on-the-road testing of vehicles and states have individual vehicle compliance inspection systems and programs. A warranty will not become effective until the vehicle's deviation from the standards subjects the owner to some sanction, such as a fine or ban from the road. Proper operation and maintenance according to the manufacturer's reasonable instructions is a precondition to the warranty, but all repair work under the warranty, as in the case of vehicles recalled because of non-conformity with the standards, must be at the cost of the manufacturer.

Section 211. Section 211 of the conference substitute authorizes the Administrator to control or prohibit the manufacture or sale of motor vehicle fuels or fuel additives. This is combined with added information-gathering powers in the registration of all fuels and fuel additives. The Administrator may impose such controls or prohibitions if emission products of a fuel will endanger public health or welfare, or if the fuel or additive impairs to a significant degree a vehicle emission control system in general use, as long as the control of a fuel does not result in a greater danger to public health or welfare from a substitute fuel.

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The concept of a control or prohibition should be taken to include requiring design

changes in motor vehicles, as well as fuel handling equipment, to ensure maximum compliance with regulations specifying acceptable fuel use for various classes of vehicles. In developing any controls, the Administrator should consider the fuel needs of existing motor vehicles, as well as future production.

While the conference substitute specifies procedures under section 211 which the Administrator will use in determining whether to prohibit or control fuels or fuel additives, the conference committee wishes to call the Administrator's attention to the relationship between his functions under this section and the emission deadlines stipulated in Section 202. It is not the intent of the Congress to create a cumbersome, time consuming administrative procedure which will delay necessary controls on fuels and fuel additives required to meet these deadlines.

Neither is it the intention of the Congress to lock the Administrator into a rigid economic interpretation of the cost benefit analysis specified in this section in making his determination to prohibit or control fuels or fuel additives.

Rather, the conference committee wishes to call the attention of the Administrator to the broad environmental, esthetic and health considerations underlying the enactment of this legislation which should be kept in mind making these determinations.

States and localities are preempted from presenting or enforcing controls or prohibitions not identical to those of the Federal government, unless an approved State implementation plan under section 110 provides for fuel or additive control in order to attain the national ambient air quality standards. California, however, is free to have any regulation of fuels or additives it finds necessary.

Sec. 231–234. A new Part B of Title II, added by the conference agreement, provides authority for the Administrator to prescribe emission standards for civil aircraft and aircraft engines. This he must do after no more that 180 days of study and after public hearings in critically affected regions. The Secretary of Transportation, through the Federal Aviation Agency, will enforce the standards. States and localities are preempted from adopting or enforcing any but identical standards. The Administrator is also authorized to recommend standards for aviation fuels, which must be prescribed by the Administrator of the Federal Aviation Agency.

The conferees expect that critical standards for aircraft will go considerably beyond the present smoke reduction program which is being carried out for three-engine jobs. To limit the standards to certain aircraft is unacceptable. To rely on smoke reduction alone ignores other, perhaps more important pollutants, which will have to be controlled as a part of the national ambient air quality standards program.

Section 304. The conference agreement authorizes citizen suits against polluters to abate violations of any emission limitation under the Act (including State implementation plans), and against the Administrator to require him to do any of the functions this Act assigns to him. Any polluter, including a government agency, is subject to such a suit after 60 days notice from the citizen-plaintiff. If a government abatement action is being diligently pursued in a United States or State court, a citizen action cannot be filed, but an interested party may intervene as a matter of right. There is no delay or notice requirement for violations of the Administrator's order or a violation of a hazardous pollutant emission standard. Cost of litigation, including attorney's fees and expert witness fees, could be awarded to either party, as the court thinks appropriate.

The Courts should recognize that in bringing legitimate actions under this section citizens would be performing a public service and in such instances the courts should award costs of litigation to such party. This should extend to plaintiffs in actions which result in successful abatement but do not reach a verdict. For instance, if as a result of a citizen proceeding and before a verdict is issued, a defendant abated a violation, the court may award litigation expenses borne by the plaintiffs in prosecuting such actions. However, there is no question that some persons may use section 304 to bring frivolous and harassing actions. In such cases, the court could award costs of litigation to defendants as it is in the public interest to avoid such actions. This should have the effect of discouraging abuse of this provision, while at the same time encouraging the quality of the actions that will be brought.

Section 305. An important provision of the conference agreement is section 305, granting the Administrator the authority to represent himself in court if the Attorney General does not qualify him that he will enter the case within a reasonable time. This is necessary if the Administrator is to have effective control of enforcement actions under this Act. The Administrator is required to initiate enforcement actions; this allows him to satisfactorily carry them out.

Section 308. In order to prevent the stringent standards of the Act from contributing to monopolist concentrations in any industries, the conference agreement provides for a limited mandatory licensing of the technology necessary to meet automobile emission standards, emission standards for hazardous air pollutants, or new source standards of performance, if covered by a U.S. patent. If rights under such a patent are not reasonably available, or the technology not commercially avail-

able through purchase of control equipment, the Attorney General may certify to a district court that some lessening of competition will result and seek a license on reasonable terms and conditions.

Section 310. The conference agreement instructs the Administrator to review and comment on Federal actions which affect environment and make such comments public upon completion of his review.

This policy conforms with Sec. 102 of the National Environmental Policy Act and was discussed with the Administrator of the Environmental Protection Agency, William D. Ruckelshaus, at his confirmation hearing on December 1, 1970.

The conference agreement thus removes the ambiguity concerning the public release of such reviews and comments which has emerged during the debate on appropriations for the supersonic transport. Those comments must be made public when the Environmental Protection Agency completes its review—not when the environmental impact agency decides the public should be informed.

Authorizations. The conference substitute adopts the House amount for Fiscal Year 1971 for Sec. 104 and Sec. 309—a total of $200 million. For Fiscal Year 1972 the conference agreement provides for a total of $350 million, of which $125 million is for research on fuels and vehicles. For Fiscal Year 1973 the authorization is $150 million for research under Section 104, out of a total of $450 million. In addition the conference substitute retains $15 million or long term contracts for air pollution effects research under Section 103, $30 million for funding the Office of Noise Abatement in the Environmental Protection Agency, and $55 million for low emission vehicle procurement, $5 million of which is authorized for Fiscal Year 1971 and $25 million each for Fiscal Years 1972 and 1973.

Mr. EAGLETON. Mr. President, will the Senator from Maine yield?

Mr. MUSKIE. I am happy to yield to the Senator from Missouri and commend him for his invaluable assistance in the committee, on the floor, and in the conference.

Mr. EAGLETON. I thank the Senator from Maine. I should like to propound to him a few brief questions just to illustrate further the significance and the parameters of this very noteworthy piece of legislation.

Before doing so, I wish to praise his enormous efforts in this valuable piece of legislation. But for the Senator from Maine, but for his diligence, his persistence, his persuasiveness, we would not have as good a bill as we today have before us.

We all recognize that this bill has great significance for our national effort to clean up the air pollution that afflicts virtually every citizen in the United States. I think we should also pause to record that this bill also marks a very significant step forward in the continuing development of more responsive and responsible relationships among the Federal Government and the State and local governments of our country. I want to thank the distinguished Senator from Maine for his vigorous and enlightened leadership on this less conspicuous but singularly important aspect of this bill. Would the Senator from Maine agree that this bill has very broad significance in the area of Federal-State relations?

Mr. MUSKIE. Yes. May I say to the Senator that during the deliberations on the bill I have been very much interested in preserving "local option" features, so that State and local authorities would be able to pursue options among a broad array, seeking a possible way of controlling or preventing air pollution that is most responsive to the nature of their air pollution problem and most responsive to their needs. In my judgment, the bill will give State and local authorities sufficient latitude in selecting ways to prevent and control air pollution.

Mr. EAGLETON. It seems to me that even with the strong provisions in this bill concerning automobiles, it will be necessary for us to devote more of our national resources to alternative ways of transporting people, particularly transporting them to and from our cities and within those cities, at less than supersonic speeds. Would the Senator from Maine care to comment on this proposition?

Mr. MUSKIE. Yes, I would. There

is a tendency to focus upon the new car provisions in the bill, and understandably so. Nevertheless, what really moved the committee, the Senate, and the conferees to go in the direction of a tough deadline for new cars is the fact that there are used cars, and the used car population creates a problem. There are 100 million to 110 million automobiles that are moving about, heavily concentrated in the large urban centers and beyond the reach, really, of any effective technological control development.

Further, if we are to deal with the used car problem, we need a new car deadline in order to begin the process of

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cleaning up new used cars. We still have existing a mass of used automobiles to deal with. The bill before us deals with that problem by the requirement of national ambient air quality standards geared to help.

Those standards, realistically applied, will require that urban areas do something about their transportation systems, the movement of used cars, the development of public transit systems, and the modification and change of housing patterns, employment patterns, and transportation patterns generally. All of that is implicit in the concept of implementation plans for national ambient air quality standards and what they mean for the used cars in our country.

Mr. EAGLETON. Would the Senator from Maine agree with me that this bill is intended to afford to the citizens of the United States very broad opportunities to participate in the effort to prevent and abate air pollution? Are not the citizen suit provision and the requirement for public hearings on State implementation plans likely to result in higher quality and better air pollution control programs across the Nation than would likely be the case if there were less opportunity for citizen participation?

Mr. MUSKIE. That was the thrust of the Senate bill in many respects, and although we did modify the citizen suit provision I feel that thrust is retained. The Senate committee felt it would be impossible to do the total job of air pollution cleanup relying wholly upon the Federal bureaucracy.

This is why we emphasized the necessity for developing State and local programs. But in addition, this bill provides for other participation by citizens in various ways. We regard that as a key element in the successful prosecution of the air pollution goals which this bill undertakes.

Mr. EAGLETON. Mr. President, as the Senator knows, long after the Senate had completed action on the air pollution bill, well after administration representatives had been invited to react to the Senate's air pollution bill, and even after an announced agreement had been reached on the vital auto deadline, to which the Senator from Maine has already referred, the Nixon administration wrote an 11th-hour letter to the distinguished Chairman of the Senate Public Works Committee. In my view, that letter can only be interpreted as an attempt on the part of some in the administration to weaken the strong Senate bill and the tentative conference compromise.

Does the Senator from Maine think that the Richardson letter is an indication that we should carefully review implementation of this program in mid-1971 to be sure that the regulations are not weakened in application?

Mr. MUSKIE. Mr. President, I agree. The Richardson letter was badly timed. It did complicate the work of the conference and make it more difficult to reach agreement and to achieve what we ultimately achieved in the conference agreement.

On this point I concur with the Senator. We should carefully review the implementation of this program next year to insure that it is moving along

in accordance with our interpretation of what we think the Senate is doing in this piece of legislation.

Regulations are not to be used to dilute and water down the strong policy which the Senate is adopting.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. MAGNUSON. Mr. President, I am not familiar with everything the conferees did. But I think that there is some confusion as to what department would be the enforcement agency.

Mr. MUSKIE. The Environmental Protection Agency.

Mr. MAGNUSON. What about the Department of Transportation? Would it have something to do with it, or the Motor Safety Division?

Mr. MUSKIE. The Senator refers to the low-emission vehicle program which the Senator from Washington introduced and of which I was a cosponsor. We had joint hearings on it with the Committee on Commerce. And it was reported out of the Committee on Commerce. It was passed as separate legislation. Then it was included in this bill. It is retained in the conference report.

Mr. MAGNUSON. Mr. President, I thoroughly agree with the Senator from Maine. We can set a deadline and then no one has any oversight over what is going on. So we come to the deadline and someone will say, "We have not done it."

They give us all the rigmarole and the reasons why they have not done it.

I am concerned about having some kind of surveillance over this as we move along toward the date decided by the conference. We could do that later. But we should have the legislative oversight committee or someone do it. Perhaps it should be the new Environmental Control Committee on which we will meet this afternoon. They might do that. I do not know.

Mr. MUSKIE. This could be within their area of jurisdiction. I think it might be useful to read this provision from the House RECORD of yesterday:

> There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

Mr. MAGNUSON. This is the sort of thing we have to keep on top of.

Mr. MUSKIE. The Senator is correct.

Mr. MAGNUSON. Otherwise we will wake up on a given date and they will say, "Well, we have not been able to do it." They will give all kinds of reasons why they have not been able to do it. There will then be an outcry to extend it.

I think we have to be sure that someone is on top of this thing all the time.

Mr. MUSKIE. Mr. President, I thank the Senator from Washington.

Mr. President, I now yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I shall ask the able chairman of the subcommittee several questions. The Senator from Maine who served so effectively as chairman of the Senate conferees, has, not only during this conference, but also during several years past, given much of himself to the development of this legislation. It is as he said in commenting on the conference report, good strong legislation.

I respectfully disagree with the words of the Senator from Maine and the words of the Senator from Missouri in reference to the appropriateness of the communication from Secretary Richardson.

Each person places his own interpretation on the content of the letter. I do not say this today for the first

time. I said it when we discussed the matter within the Public Works Committee and when we discussed it within the conference. I am only repeating what I have said before.

I am very frank to say that I think the letter should have come to us sooner. This is something that I want the RECORD to reflect. I also want the RECORD to indicate that there had been no final decisions made here on Capitol Hill in reference to this important legislation at the time the communication was received. The democratic process is at work. The legislative process is at work. The advice from the executive branch is at work in reference to the finalization of this important legislation.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. MUSKIE. Mr. President, to clarify my position with reference to the administrator's prerogative to comment on this legislation or any legislation, it is not my intent in the remarks I made earlier that the administration does not have that prerogative. From the time we reported this bill out of the Subcommittee on Air and Water Pollution, we publicly and in other ways solicited the administration's position on the provisions of the bill.

It would have been useful to have had the administration position in the course of the floor debate. We speculated about it, but we did not know what it was.

We went to conference, I think, about October 8 or 9. We reached a tentative agreement on the auto emission deadline on that day. The letter from the Secretary of HEW is dated November 17, some 6 weeks later. It is that to which I direct my criticism. Six weeks after we started the conference we got this letter on the administration's position. Certainly it is the administration's prerogative to send it up at any time it wishes. They could have sent it today. I am talking now about the very disruptive effect the timing had.

Mr. RANDOLPH. I have agreed with my distinguished colleague, the Senator from Maine, that I felt the letter was late in arriving. I made that statement at the very outset. But I do not look on a letter from the administration setting forth its views as disruptive.

I look on it as a further indication of the interest of the parties who are in the Federal Government either officially or

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indirectly, and that, I think, is the democratic process.

Mr. EAGLETON. Mr. President, will the Senator yield?

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Mr. President, who has the floor?

The PRESIDING OFFICER. The floor is held by the Senator from Maine, who had yielded to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I have some further remarks I am going to make in reference to the conference report, but I have just called attention to the colloquy here.

The PRESIDING OFFICER. The Senator from Maine has the floor.

Mr. MUSKIE. Mr. President, I yield the floor so the Senator from West Virginia can have the floor in his own right for the purpose of yielding to other Senators.

Mr. BAKER. I wanted to make sure who had the floor so that I know to whom I should address my inquiry so that I might comment on the colloquy between the Senator from Maine and the Senator from Missouri.

The PRESIDING OFFICER. The

Chair recognizes the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, because of the colloquy which has ensued, I yield next to the Senator from Missouri.

Mr. EAGLETON. I thank the Senator. As the Senator from West Virginia knows, the air pollution bill was pending before the Committee on Public Works for many months.

Mr. RANDOLPH. The Senator is correct.

Mr. EAGLETON. And on numerous occasions representatives of the administration, Dr. Middleton, and others in the Department of Health, Education, and Welfare, either testified before the Committee on Public Works, and I refer to the Subcommittee on Air and Water Pollution of that committee, or had conferences and communications with that committee.

Mr. RANDOLPH. The Senator is correct.

Mr. EAGLETON. It is well known that as the bill evolved through the committee process, in subcommittee, in full committee, in markup, and so forth, and it was widely disseminated in the public press that the Senate committee was considering a 1975 model year cutoff with respect to new cars.

Mr. RANDOLPH. At this point the able Senator knows that much of what is printed in the press on so-called executive sessions, and conversations of Members, is a constant problem, not that the press should not inform its readers. I commend the media for attempting to be accurate. But I think there is a constant question mark in stories of this kind. I would not say that what we were doing was precisely set forth.

Mr. EAGLETON. Passing for a moment from what had or had not been published in the press, it was abundantly well known in the Department of Health, Education, and Welfare that the Senate committee was considering and leaning strongly toward a 1975 cutoff with respect to new cars. Is that correct?

Mr. RANDOLPH. The Senator is correct.

Mr. EAGLETON. Then, I would like to ask this question, without for a moment wishing to detract from the excellent bipartisan cooperation in the committee and in the Senate which has made this bill possible: No one questions the prerogative of any Cabinet official to write a letter to any Senator or Representative at any time he is predisposed to do so; but what is raised by the timing of this letter is more significant than the content of the letter. Bear in mind that we worked on this bill for many months and that we had gone through laborious executive sessions in the Committee on Public Works, and we had Mr. Middleton for a part of those sessions, and the bill was reported to the floor. On the floor it was vigorously debated, and, in particular, the provision on automobiles was debated between the Senator from Maine and the Senator from Michigan. Then the bill went back to conference. There was a tentative agreement, and it was printed in the press before the election recess that the tentative agreement had been reached on this portion of the bill. After all of that, we hear in writing from Secretary Richardson for the first time after the election recess that he has some objection to the 1975 cutoff deadline.

The point I am trying to make is that I do not question Mr. Richardson's ability or authority to write the letter. But with that history behind this bill I do question why it took him until November 1970 to make his position clear with respect to this single most contentious portion of the bill.

Mr. RANDOLPH. I wish to reply. I have said that it would have been much better if the letter from Secretary Richardson had come sooner.

Frankly, in the matter of a conference report I am not interested in attempting to charge the administration with being weak. I am not attempting to charge them with being weak or strong on this subject matter. The Senate acted, the House acted, and now Congress is acting.

It is my feeling that that which has gone before—the expression of various viewpoints and possibly the late timing of the expression by the Secretary—are matters that perhaps are not as important as what we have done. That is why I have said it is a matter of interpretation. I respect my colleagues in their discussion of the matter and I understand they have their reasoned judgment on the matter. I am sure other members of the committee and of the Senate have their feelings with respect to the situation.

Mr. EAGLETON. I thank the Senator.

Mr. BAKER, Mr. President, will the Senator yield?

Mr. RANDOLPH. Mr. President, I yield to the Senator from Tennessee.

(At this point Mr. EAGLETON assumed the Chair.)

Mr. BAKER. Mr. President, I was a conferee in connection with this bill. I am a member of the Subcommittee on Air and Water Pollution and have been since I came here in 1967. I have served with great pleasure under the chairmanship of the chairman of the subcommittee and the distinguished chairman of the full committee.

As far as I can recall, this is the first time the purposes of an air quality bill, or for that matter a water bill, have been subordinated in debate on the floor, or in committee, for political purposes. I feel that was the case in the colloquy that just took place between the Senator from Maine and the Senator from Missouri.

I feel the Senate passed a meaningful, worthwhile and strong bill. I think it will contribute materially to the business of cleaning up air in this country and taking care of the problem of automobile emissions. That has been accomplished because Republicans and Democrats on that committee for many years have cooperated not only between each other but at the staff level. Under the leadership of our chairman on the full committee and the chairman of the subcommittee staff members have cooperated, and there has also been cooperation with the agencies of government in the executive department which, for weeks, months, and years on end have conferred almost constantly with staff members on the minority side and the majority side as to how best to arrive at sound conclusions. This cooperation has been so close that some of these discussions are discernible in the platforms of both major parties and in the state of the Union message of the President of the United States. That is no small accomplishment for a committee or a subcommittee.

The Senator from Maine is to be commended without restraint for his leadership and motivation to the rest of us in this field. That makes it all the more tedious for me to sit in this Chamber on the eve of the adoption of a conference report underscoring a good bill and hear a political purpose being served by a bill that was worthwhile, notable, and nonpolitical, even under circumstances which might understandably have been suspect of producing a different atmosphere and a different set of circumstances.

If the Senator from West Virginia will yield for a moment more I wish to clarify my statement. I am referring specifically to the remarks, as I understood them, by the junior Senator from Missouri to the effect that the Richardson letter, referring to the Secretary of Health, Education, and Welfare, Elliot Richardson, dated November 17, 1970, and I quote: "must

be interpreted as an attempt on the part of the administration to undercut the strong Senate bill."

Now I had not proposed to say anything about the automobile section at this time as the Senate considered this proposal because I believe my colleagues who were conferees on this bill will recall that I was the only conferee in the House or the Senate who did not agree and specifically voted against the first weakening of this bill.

I think my conferee colleagues might also agree that I have contended from the very beginning that Congress ought

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to do what we apparently have not chosen to do in this case, and that is to remove the serious business of deciding whether or not the automobile industry has made a good faith effort to comply with the bill's requirements beyond the tender mercies and the political motivations of a future Congress, and, rather, vest it in the independent judiciary to gather those facts and resolve those conflicts and decide, in 1976, a Presidential year, an election year for a third o fthis body and all of the House of Representatives.

The legislative department will be called upon to sit as a factfinding body to decide whether or not the automobile industry will be permitted to continue manufacturing automobiles, assuming it has not fully met this statutory deadline. I think it is a horrible prospect. I think it would be difficult enough for the independent judiciary to undertake it.

All of that, I say again, I have subordinated to the desires of the majority of the conferees, and I felt, and I still feel, we have a good bill, but I also feel that it is unfair to overlook the weeks and months of coordination between the members and staff of this committee and this administration and the previous administration, and the weeks and months and even years of nonpartisan cooperation between the members and the staff of this committee, and the inspired leadership of our committee chairman and our subcommittee chairman in trying to unravel probably the most delicate and complex domestic problem that has confronted the country in 100 years, and do it in a spirit of give and take; and then as we get to final passage of the bill, with a few Senators on the floor, we hear the charge that the position of the administration is to undercut a strong Senate position.

I submit that is not worthy of the effort that has gone into this legislation thus far and into previous legislation in previous sessions of the Congress.

Mr. RANDOLPH and Mr. COOPER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I wonder if I might complete a very brief comment on the conference report.

Mr. COOPER. I wanted to comment on the point just made.

Mr. RANDOLPH. I yield to my able colleague from Kentucky.

Mr. COOPER. Mr. President, I know the Senator from West Virginia will point out the constructive work the Senate and House conference have done on this most important bill. But before he speaks, I want to respond to the statements that have been made that the letter from the Honorable Elliot Richardson indicates that the administration will try to undercut this bill. I must say I have found nothing in the letter which supports the statement. In fact, while the letter disagreed with the Senate and House versions of the bill on some points, the letter states that the administration wants a strong bill. Secretary Rich-

ardson said this in the closing paragraph of his letter:

In conclusion we would like to reiterate the Administration's strong support for the effective control of air pollution by legislation embodying the major features of the House and Senate bills. Accordingly, we recommend the enactment of such legislation, incorporating the recommendations made above, during this session of the Congress.

Mr. President, I ask unanimous consent that the entire text of Secretary Richardson's letter be inserted at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Washington, D.C., November 17, 1970.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to present the views of the Administration to the conference committee considering the House and Senate versions of H.R. 17255, amendments to the Clean Air Act.

To begin with, it is extremely gratifying to note that all of the major Clean Air Act amendments proposed by President Nixon in his February 10, 1970 environmental message to the Congress are reflected in both versions of the bill. I refer specifically to the President's proposals regarding national air quality standards, State adoption of implementation plans covering the whole area of every State, emission standards applicable to major new stationary sources of air pollution and to hazardous emissions from all stationary sources, expanded and streamlined enforcement powers, assembly-line testing of motor vehicles, and regulation of fuels and fuel additives.

We are, therefore, fully in accord with the objectives and the essential features of both the House and Senate bills. In our judgment, however, both bills have certain provisions that should be modified in the manner recommended below. While this letter makes reference to the Secretary of HEW throughout, as do both bills, we note that the Senate bill has the effect of vesting these authorities in the Administrator of the Environmental Protection Agency, as contemplated by Reorganization Plan Number 3 of 1970.

Automobile Emissions. The Senate bill would require, under provisions that have no counterpart in the House bill, that certain automobile emissions be reduced by 90 percent from the 1970 levels by 1975, unless the Secretary of HEW extends this period for one year, which extension would be subject to judicial review.

The objective of these provisions is to accelerate substantially the current timetable for controlling automobile emissions. The Senate bill does this by making effective in 1975 the standards administratively projected to take effect no later than 1980. We fully support the objective of accelerated control of automotive air pollution and support the proposed establishment of 1975 as a target date for achieving the proposed 90 percent reduction.

Based on the information available to us at this time, we are uncertain whether the requisite control technology will be developed and reduced to commercial practice on a mass-production basis by 1975-76. This presents the Federal government with a dilemma. On the one hand, if, despite a maximum effort, the necessary control technology cannot be developed and put into production, then emissions cannot in fact be reduced to the levels sought. On the other hand, the prospect of repeated deadline extensions based simply on the absence of control technology gives rise to an understandable concern that automobile manufacturers may not press the development of such technology and its application as rapidly as they should to meet air quality requirements.

The Senate bill would resolve this dilemma by providing an absolute statutory deadline of 1976, despite the fact that the very basis the bill provides for the single extension from 1975 to 1976—that all good faith efforts have been made to meet the standards, but no effective control technology has been developed—would logically justify additional extensions for a manufacturer on the basis of similar findings.

We believe that provision for additional extensions of the deadline can be made while at the same time assuring maximum effort by the manufacturers, as sought by the Senate bill. To accomplish this, we suggest that, using the 1975 standards as a yardstick, the manufacturers' efforts be examined periodically by a highly competent, impartial body outside of Government—the National Academy of Sciences and/or the National Academy of Engineers would be eminently qualified to play such a role. (We understand the conferees are interested in using the Academies in a manner that may be related to this proposal.) Such examination should involve periodic determinations of the manufacturers' level of effort and judgment as to the progress in developing adequate control technology, and its application to mass production. The results of such examinations would keep the Congress

and the Secretary informed of the manufacturers' efforts and progress toward meeting the standards and provide the Secretary with a basis for determining whether to grant or deny any extension which a manufacturer might seek. It seems to us that such a procedure would provide a more orderly and equally beneficial process for achieving the results sought by the Senate bill.

We would also favor two other changes in the provisions of the Senate bill with respect to automobile emission standards. *First*, there is a serious question whether the bill, in fixing January 1, 1973 as the earliest time a manufacturer could seek a deadline extension, gives proper recognition to automotive production lead times. Establishing *any* specific date in the bill seems unnecessary to us, however, and we recommend that this matter be left up to the judgment of the Secretary. There is clearly a natural regulator at work here, since the earlier a manufacturer might seek an extension, the less credible would be its claim that it had made a good faith effort to meet the standards. *Second*, we also recommend that, instead of providing for essentially de novo judicial review of the Secretary's decision with regard to an extension request, the bill should provide for the customary more restrictive scope of judicial review.

Warranty of Automotive Pollution Control Systems. In provisions that again have no counterpart of the House bill, the Senate bill requires, effective 90 days after appropriate test procedures have been established, that the automobile manufacturers warrant that their pollution devices will meet prescribed emission standards for 50,000 miles.

In testimony before the Senate committee the Administration supported the principle of requiring a manufacturer's warranty of control devices, and we continue to support this principle. However, we regard the 50,000 mile warranty as inappropriate and unrealistic in the light of known technology and experience.

At the present time neither the Federal government nor the manufacturers have sufficient or reliable knowledge as to why, in some cases, a particular automobile in actual use fails to meet emission tests. This being the case, substantial and no doubt

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lengthly research and studies would have to be undertaken before the Secretary could, with any confidence, promulgate defensible test procedures, which under the bill would make the manufacturers liable for the satisfactory performance of emission devices for 50,000 miles. Thus, the provisions of the Senate bill could have the unintended result of actually delaying the imposition of *any* warranty requirements for a long period of time. If on the other hand the Secretary were to promulgate test procedures before the Government or the manufacturers better understand why some automobiles fail to meet emission requirements, manufacturers would almost certainly price the warranty at a level which would fully protect them from this lack of knowledge. Also, the manufacturers could understandably specify extremely stringent maintenance requirements as condition of the warranty. Since most car owners would have little incentive to comply fully with all of these requirements, the warranty would be unenforceable in many cases and would make virtually no contribution to control of air pollution.

We favor including a provision in the bill which would authorize the Secretary to impose warranty requirements on the manufacturers as he determines that such requirements can be justified on the basis of adequate operating knowledge that has become available. Such warranty requirements could be made more stringent as more knowledge and experience in these matters are gained, with a view toward progressing to the goal of a 50,000 mile warranty requirement on all new automobiles. We also favor requiring from the outset a manufacturer's warranty against defects in material and workmanship.

State Vehicle Emission Standards. The Senate bill, in provisions not contained in the House bill, would empower States to fix special emission standards for new vehicles more stringent than the standards fixed by this legislation if the States could prove to the satisfaction of the Secretary that such action were necessary to meet air quality standards in regions within their jurisdiction.

We believe that existing law properly provides for Federal preemption of emission control standards for new vehicles, in recognition of the need for uniformity and the inability of manufacturers to produce different types of vehicles for a number of States. In addition, as a practical matter there would appear to be very little further reduction in automobile emissions available to the States, in view of the stringent Federal emission standards contemplated by the Senate bill for 1975. We recommend that the present Federal preemption concept be retained without change, and that the States attain air quality standards by the ample variety of other means contemplated by the bill—including control of emissions from other than new cars, and, if necessary, traffic controls.

Export Vehicles. The Senate bill would eliminate a provision in the existing Clean Air Act which exempts new motor vehicles and engines manufactured solely for export and sale abroad from applicable emission standards. The House bill would make no change in existing law in this regard.

We are unaware of any rationale to support

this proposed change, and we believe that the considerations which supported the present export exemption provision are still valid. The emission standards adopted by a number of foreign countries on the basis of their air pollution control needs probably will continue to be significantly less stringent than the emission standards contemplated by the Clean Air Act. American motor vehicles are required, of course, to comply with applicable foreign emission standards, and requiring them to comply with the differing American standards could seriously prejudice their competitive position abroad.

Mandatory Licensing. The Senate bill compels holders of patents, trade secrets, or know-how on pollution control devices to grant licenses to all applicants for the use (upon payment of reasonable royalties) of these devices, if the Secretary of HEW determines that this is necessary to facilitate compliance with air pollution standards for automobiles, aircraft, and vessels, for hazardous facilities, or for new stationary sources. There are no comparable provisions in the House bill.

The constitutionally-recognized protection which patents afford has been a key element in encouraging innovation, and we are seriously concerned as to what the ultimate effects of this major change in policy might be. In particular, we are uncertain as to its possible deterrent effects on the incentive to invent in the pollution control field, where the need for innovation is so great. Moreover, we are not aware of the basis for assuming that developers of essential air pollution control technology would refuse to make it available either by license or direct sale to the users.

We recognize that this authority is permissive, and that the report of the Senate Public Works Committee emphasizes that very restrictive use should be made of it. Despite this, we are not convinced of the need for such a basic change in policy in light of its potential adverse effects and in the absence of known abuses. If in the future a situation arises in which a refusal to make technology available threatens to jeopardize the national air pollution control effort, Congress can then legislate to meet the particular problem.

Citizen Suits. The Senate bill authorizes citizens to bring civil actions against alleged polluters (including governmental entities) or against the Secretary of HEW to enforce compliance with the requirements of the Act. There are no comparable provisions in the House bill.

In authorizing citizen suits directly against alleged polluters, this provision builds on the trend of existing law, and we do not object to its enactment. Such suits can contribute to the effective enforcement of air pollution control measures.

However, the authorization of citizen suits against the Secretary to force him to take enforcement action in a particular case would have the unintended result of reducing the overall effectiveness of our air pollution control efforts by distorting enforcement priorities that are essential to an effective national control strategy. Therefore, we recommend the deletion of that portion of the provision authorizing suits against the Secretary. This deletion will not affect the right of citizens to move directly against alleged polluters, including Federal agencies.

We note that the Senate bill contains no express provisions either requiring bonds to be posted as a condition for granting preliminary injunctions (i.e., injunctions granted before full hearings) or explicitly stating the authority of the courts to fit final relief to the equities of the case. Adequate bonds and flexibility of relief can be very important in cases of this type. However, we trust that the courts will exercise their existing authority to fix preliminary injunction bonds at levels sufficient to protect any defendants later found upon full hearing to have complied with the Act and to frame final orders that fully take into account all of the circumstances of the case.

State Implementation Plan Deadlines. The Senate bill provides that within nine months after promulgation of any national ambient air quality standard each State is to submit to the Secretary for approval an implementation plan for each air quality control region, providing for the attainment of the standard within three years after approval of the plan. In addition to limited Secretarial authority for extensions based on new information, provision is made in the bill for judicially-granted one-year extensions of the three-year deadline, upon petition of the Governor of the State concerned (subsequent to the approval of the implementation plan) if the Court determines that such relief is in the paramount interest of the U.S. and that means to control the emissions have not been available for a sufficient period of time. The House bill contains no such provisions.

In providing for extensions of this deadline subsequent to approval of the implementation plan, the Senate bill plainly concedes that cases may very well arise where marginal or inadequate emission control technology would render it impossible to meet the standard within the three-year period. Although both the State and the Secretary might agree that this is so at the time an implementation plan is submitted for approval, the Senate bill forbids the Secretary from approving anything but a three-year implementation plan, which in due course probably would be appealed by the Governor. The net effect of the bill's provisions in such cases would be to

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place both the Secretary and the State concerned in the untenable position of approving an implementation plan they know is unrealistic and probably unworkable.

To avoid this type of situation we favor an amendment which would, in the few cases where it might be necessary, permit the Secretary to extend the deadline at the time the State's implementation plan is being reviewed and approved. Such extensions should only be made if the Secretary determined that adequate control technology is not available and is not likely to be available, and he should be required to make public his determination and the specific grounds on which it rests. Moreover, once beyond the three-year period the Secretary should determine periodically whether adequate control technology is available and make known his findings and any requisite compliance determinations resulting therefrom.

Certification of New Sources. The Senate bill establishes a Federal requirement (which could be delegated to the States) to certify that all new stationary sources of emissions meet Federal performance standards reflecting the latest available control technology and processes. Such certification would involve (a) preconstruction review of locations and design of any new source, (b) performance tests within a reasonable time after operation commences, (c) methods to identify violations and enforce compliance, and (d) methods to assure that any new source will not prevent implementation of national air quality standards or goals. The House bill contains no comparable provisions.

We feel that this certification procedure is overly elaborate and would impose a heavy and unnecessary burden on both the Government and industry. Moreover, industry would appear to have ample incentive for preconstruction consultation with responsible officials even without this special mechanism. We see no reason why performance requirements could not be established and enforced in the same manner as other emission requirements. If compliance with performance standards were made part of a State's implementation plan, these adverse consequences would be avoided and there would also be the additional benefit of placing the basic enforcement responsibility in the State, as is generally the case under the Act, rather than in the Federal Government, as the Senate bill provides.

While we recommend that basic enforcement of performance standards should be in the States, we favor retaining the provision of the Senate bill which allows the Secretary

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to enforce these standards without being required to make a finding that a State has failed to perform adequately. We also would favor a similar pattern for the enforcement of emission standards established under section 114 of the Senate bill.

We can see merit to a statutory requirement that the emissions from all new sources would have to be measured at the time (or within a reasonable time thereafter) they begin operations, and we would support the retention in the bill of provisions to accomplish this purpose.

National Security Exemptions. The Senate bill authorizes the President to exempt Federal property, facilities, vehicles, or vessels from applicable emission standards, whenever he determines that this is necessary in the paramount interest of the United States. The bill also authorizes the Secretary of Defense to defer for one year, if necessary for the purpose of national security, the applicability of emission standards to military aircraft and vessels. The comparable provision in the House bill, which covers only emissions from new stationary sources, carries out the Administration's recommendations for exemptions by the Secretary of HEW when he determines they are necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

We would support the approach of the Senate bill, if aircraft are included under the Presidential exemption provision, since the reasons for authorizing exemptions for all other Federal facilities, vehicles, and vessels are equally applicable to aircraft, particularly combat aircraft. We also believe that the Presidential exemption should be made applicable to non-Federal facilities, since there could conceivably be instances where their exemption would be as much in the paramount interest of the U.S., as would be the exemption of Federal facilities.

Hazardous Emissions. The Senate bill requires zero emissions from facilities determined by the Secretary of HEW to be emitting pollutants hazardous to health even in trace amounts, with a specified timetable for compliance and enforcement, unless the owner of such facility can demonstrate that continued operation (under applicable emission standards) will not endanger the public health. The House bill contains no comparable provisions.

Of course, hazardous emissions should be effectively and quickly controlled, as was recognized in the Administration's bill. Because the Senate bill in Section 114 gives the Secretary general authority to set emission standards, down to zero levels, for all facilities, we think the Secretary should have the flexibility to deal with hazardous emissions on a priority basis within this general authority. In fact, the Secretary could move more swiftly and

equally effectively under such general authority, in Sections 114 and 116 of the Senate bill, than he would be able to under the special hazardous emission control procedures contained in Section 115. Accordingly, we recommend deletion of Section 115 of the Senate bill, and any necessary modifications of Section 114 to fully cover hazardous emissions.

Low Emission Vehicle Procurement. The Senate bill requires the Federal Government, in provisions not contained in the House bill, to procure vehicles determined to be "low emission", and authorizes premium prices to be paid for such vehicles.

These provisions were contained in a separate bill added by amendment on the Senate floor. We had recommended a number of modifications in these provisions in comments on both that separate bill and a comparable bill in the House. We continue to support these changes, and particularly feel that there should be discretion in the President with respect to procurement of these vehicles in order to assure realistic accommodation to budgetary priorities and the special vehicular needs of the Government, and to permit orderly procurement should there be a number of "low emission" vehicles to select from.

Fuels and Fuel Additives. The House bill contains a number of restrictive provisions on the authority to fix standards respecting the composition of fuels or fuel additives. For example, standards on fuels and fuel additives could be fixed under this authority only if the Secretary could show that it is not otherwise technologically or economically feasible to achieve automobile emission standards. The Senate does not contain similar restrictions.

The Administration recommended broad authority to regulate fuel and fuel additives, because it believed that such authority, in conjunction with controls over sources using such fuels, is necessary in order to mount the most effective overall attack on air pollution. We recommend, therefore, that these provisions be modified to conform with the Administration's air pollution bill, the essential provisions of which on this matter are incorporated in the Senate bill.

Also in connection with fuels, we would recommend that authority over aviation fuels and additives be lodged in the Secretary of HEW, who will have jurisdiction over all other fuels and additives, rather than being placed in the Administrator of the Federal Aviation Administration, as the House bill provides.

Personnel. Two troublesome provisions of the Senate bill, relating to personnel who would be authorized to participate in carrying out the Act's requirements, raise serious precedential and administrative problems and we urge their deletion. There are no comparable provisions in the House bill.

Section 10 of the Senate bill would authorize a sweeping exemption from the customary Civil Service appointment and classification laws, as they relate to the procurement of personal services to carry out the Act's requirements. We believe that the personnel needs of the air pollution control program, like similar needs in other urgent Federal programs, can be met within the Civil Service framework. In addition to creating a most undesirable precedent, this provision would constitute a marked departure from a long-standing Federal policy against the performance of clearly governmental functions by non-governmental personnel, which is of particular concern in this instance due to the important regulatory and enforcement actions to which such work could give rise.

The Senate bill provides in various sections, but most notably in proposed Section 305 of the Act, that attorneys appointed by the Secretary would be authorized to represent him in suits brought by or against the Government under the Act's provisions. Such authority is at odds with long-standing Federal policy of this and prior Administrations of placing litigating authority in the Attorney General, to be exercised as he deems appropriate. This policy derives from the sound administrative practice of relying on the Justice Department's established legal expertise and resources, rather than promoting the duplication of such expertise and resources in each of the Federal departments and agencies. We favor deleting Section 305 (as well as making comparable conforming changes in other provisions of the bill), the result of which would be that in actions instituted under this Act, officers of the Department of Justice under the direction of the Attorney General would appear for and represent the United States or any officer or agency thereof, including the Secretary.

Procedural and Technical Changes. We believe that there are a number of places in both the Senate and House bills where changes in procedural and technical provisions would avoid unintended results and materially improve the legislation. We would like to furnish such changes to the conferees informally along with the revisions needed to carry out the amendments recommended in this letter. In view of the sweeping and widespread implications of this bill, and in order to avoid, to the greatest extent possible, litigation that could slow down its implementation, we believe you will agree that its complex provisions need to be drafted with the greatest possible care and precision.

In conclusion, we would like to reiterate the Administration's strong support for the effective control of air pollution by legislation embodying the major features of the House and Senate bills. Accordingly, we recommend

the enactment of such legislation, incorporating the recommendations made above, during this session of the Congress.

The Office of Management and Budget advises that enactment of H.R. 17255, if amended as recommended in this letter, would be in accord with the program of the President.

Sincerely,

ELLIOT RICHARDSON,
Secretary.

Mr. COOPER. Mr. President, Elliot Richardson is a man of quality and integrity. He would not make statements to the Senate and to the Senate Public Works Committee which were in contradiction to his deeply held views.

The administration has made, from time to time, recommendations relating to the whole field of the environment and particularly on pollution control. It has responded more to these problems than any administration we have known.

I have always, and do now, pay tribute to the chairman of the subcommittee, whose leadership in this field is known not only to Congress but to the country. I pay tribute to the chairman of the Public Works Committee. I have served on this committee, I suppose, longer than anyone else on the committee. I served 2 years in the Senate in 1947 and 1948, and I was on that committee. We passed in 1948 the first pollution control bill. It was small in scope, but a good one, and was sponsored by the late Senator Robert Taft of Ohio and the late Senator Alben Barkley of my State of Kentucky.

We have been fortunate that Democrats and Republicans have served together under fine leadership. We have laid aside political matters. We have worked openly and honestly with each other. For that I am thankful, and I am sure that the Senate is thankful. But, in my opinion, I must say I think it is unfortunate to interject political views as we come to the point of approving what has been termed as the most complex, and one that will perhaps have greater significance and impact than any bill in this century. So I regret that those speculations have been made. I hope we will continue to go forward and work as we have in the past.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. RANDOLPH. I yield.

Mr. MUSKIE. Mr. President, I made the statement earlier that I was disturbed by the Elliot Richardson letter, and I was. But I concede that to discuss it, in connection with this conference report is unfortunate. Whatever opinions we had about it we could discuss elsewhere, and we could discuss them as we wished. I wish the issue had not arisen most of

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all because the Republican side of this subcommittee and this committee has cooperated so wholeheartedly over so many years in the development of this legislation. I refer to the Senator from Kentucky, the Senator from Tennessee, the Senator from Delaware, the Senator from Florida, and the Senator from Kansas. There has never been the slightest bit of partisanship in any of our committee deliberations or in our conference work with each other over a period of some 7 or 8 years now. I want to underscore what my good friends from the Republican side of the aisle have said on that point this afternoon.

I want to say to them that I do regret that this argument has arisen this afternoon. I hope we will proceed now to dispose of the conference report.

I know the Senator from West Virginia desires to put some questions to me.

Mr. RANDOLPH. Yes; I do wish to do that.

Before doing so, I repeat that this legislation represents a significant

achievement in the evolution of our national environmental policy—an evolution which has been carried forward, in great degrees, by the leadership of the Senator from Maine (Mr. MUSKIE). I think that we have to insure the protection of the health of the citizens of this Nation, and we have to protect against environmental insults—for when the health of the Nation is endangered, so is our welfare, and so is our economic prosperity.

I think that the emphasis here on the health benefits that will follow when implementation of the bill becomes law is very important.

I now ask the distinguished chairman of our subcommittee whether it is not a fact that, when we have dealt with previous legislation, we have concentrated primarily on the immediate problems of air pollution control and the environment, and it seems to me now that we are providing additional enforcement for those existing sources of air pollution, but, more significantly, we are providing effective means of prevention of future air pollution problems.

Is that the feeling and the understanding? I believe the record should reflect it.

Mr. MUSKIE. Yes; I think that to a greater extent than we might have in past legislation, we are undertaking to deal with the long-term aspects as well as the short term. I would agree with that.

Mr. RANDOLPH. And provision is made for performance standards for new stationary sources, to make sure that no industrial development will degrade the quality of the air so as to endanger public health and welfare, or interfere with and restrain further economic growth. I know at times on the subcommittee and on the committee we have talked about the economics of this legislation as well as the health standards of the legislation, and I know that the Senator from Maine has been one of those who have recognized that this legislation is both an economic measure and an air pollution measure.

I believe that is correct; may I inquire whether the Senator shares that view?

Mr. MUSKIE. The Senator is correct. It undoubtedly will have an economic impact all across this country.

Mr. RANDOLPH. Yes, it will, and it will be costly. And yet the ugly face of pollution must be erased.

The implementation of the policies that are contained in this measure will test the determination in this country to achieve a livable environment, not only for ourselves but for future generations. In turn, the legislation will test the willingness of the citizens—not just the various levels of government, but the citizens of this country—to control, abate, and prevent environmental pollution. And I wish to compliment the Senator from Maine that, in his addresses throughout the country, in his presentation of these problems before audiences on college campuses and elsewhere, he has emphasized the personal obligation which must be recognized—a rebirth, I should say, of responsibility on the part of the individual citizen of this country.

Is that the feeling of the Senator from Maine?

Mr. MUSKIE. Completely, may I say to the Senator. We cannot clean up the pollution problem with a piece of legislation. There has to be commitment to it by every citizen, not only with respect to the activities of others, but with respect to each citizen himself, to deal with this problem.

Mr. RANDOLPH. Yes. I appreciate the Senator's attitude.

I conclude by saying that ultimately each and every person will be called on to pay the increased costs—and we must not forget it—associated with

the achievement of an environment that, at a minimum, does not endanger public health, for, frankly, if we do endanger public health, we shall have degraded the environment. Effective implementation will require a major commitment, as the Senator from Maine has said, of Government and of industry, of course, but also—and I appreciate his stressing its importance, as I have—of each individual citizen.

I am pleased that the House conferees have made an authorization of $1.1 billion for fiscal years 1971 and 1972. These figures represent the magnitude of the commitment that will be necessary to meet the challenge that is ahead. The next step must be to provide Federal staffing—and I think this is most important—commensurate with the effective implementation of what we are doing today. We must not allow understaffing—the Senator from Maine has discussed this matter in our subcommitee and our committee, and in conference—of this Federal program, because if that happens, it will be a major interference with the implementation of the National Air Quality Standards Act of 1970, as was the case, very frankly, in connection with the Air Quality Act of 1967.

I commend all those who have worked within the conference and all those who have worked within the House of Representatives and the Senate, and especially I commend the chairman of the conference, Representative HARLEY O. STAGGERS, who was a strong advocate, a fair negotiator, and a patient chairman. I commend also the very able chairman of the Senate conferees, my friend, Senator MUSKIE, and all the members of the Committee on Public Works and their staff, both majority and minority, who have put so many long hours into a bipartisan effort to bring forth what will be the most effective pollution control legislation yet enacted by the Congress.

Mr. SPONG. Mr. President, the conference report before the Senate, when fully implemented, will assure an accelerated rate of progress in our national effort to improve the quality of our air environment.

The Senate conferees acceded to several modifications in the bill approved unanimously by the Senate on September 22, 1970, but the final product is an effective and far-reaching environmental protection measure.

The conference report would establish as 1975 standards the automobile emission goals previously proposed for 1980 for carbon monoxide and hydrocarbons. We have accelerated by 1 year the date on which automobile manufacturers may seek an extension of that deadline. By allowing such applications to be filed on January 1, 1972, we have taken into fuller account the leadtime problems of the automobile industry.

The report also would enable the Administrator of the Environmental Protection Agency to set interim standards in the event he finds technology is not available to meet the standard provided by law. The Administrator, in making a decision on interim standards, would have the benefit of reports from the National Academy of Sciences on the progress that has been made in the development of technology and knowledge of the good-faith effort of the industry to meet the 1975 deadline.

The report sets a deadline of 1976 for meeting the standard for oxides of nitrogen, with provision for a 1-year extension. Automakers could apply for that extension on January 1, 1973.

The thrust of the section of the Senate bill requiring the establishment of national emission standards for hazardous substances has been changed. The Senate measure required the publication of a proposed prohibi-

tion of emissions of hazardous substances. The conference report requires the Administrator of the Environmental Protection Agency to publish a list of pollutants which in his judgment is extremely hazardous to public health. He would subsequently publish proposed regulations establishing emission standards. The modified provision requires the Administrator to "establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such extreme hazard."

The conference report retains concurrent Federal-State jurisdiction over enforcement activities, although the final product is a combination of the Senate and House approaches to the matter. We agreed that in situations where a State has primary enforcement responsibility, the Administrator of EPA would be required to give the State 30 days notice before issuing an order or seeking court action. The Administrator may act without notice to the State in cases where

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the Federal Government has primary enforcement responsibility.

Both bills provided for the establishment at the Federal level of national ambient air quality standards, and that concept is of course in the conference report. Implementation plans to be prepared by the States to meet the standards must provide for achieving the standards within 3 years. Again, there are provisions for an extension in the event technology is not available.

I wish to emphasize, Mr. President, that the implementation plans to be prepared by the States to meet the primary national air quality standards must include provision for land use and transportation controls. In my judgment, the term transportation controls is not restricted to motor vehicles. For some areas, the implementation plans may well specify a limitation upon the number of civil aircraft which may land at any airport within such areas. Such restrictions may be necessary in certain metropolitan areas in order to meet the ambient air quality standards.

The conference substitute retains the Senate provision for citizen suits against violators, although suits against the Administrator of the Environmental Protection Agency are limited to actions in which there is an alleged failure by the Administrator to perform mandatory duties imposed by the statute. Before a suit can be brought, 60-day notice must be given to the alleged violator, the Administrator and the State. The courts are given discretionary authority to award costs, including reasonable attorney and witness fees, to any party.

Mr. President, I understand the purpose of that section of the report which establishes a mechanism for the licensing of patents to those subject to emission standards to be set under the legislation. It is our intent to provide an assured supply of technology to all needing it to comply with the standards.

After reflecting upon the implications of the section, I would have preferred that the issues involved be reviewed by the Judiciary Subcommittee on Patents, Trademarks, and Copyrights. However, the conference report language on the matter is an improvement over the provisions in the Senate-passed bill. The section will not become generally operative for at least 2 years, and in the interim I would hope that the issues involved will be the subject of hearings and review.

Mr. President, the conference committee has devoted many hours of arduous work on its report. It has been a rewarding personal experience because of the dedication of those in-

volved to see the objective of protecting the public health. I wish to thank and commend the Senator from West Virginia (Mr. RANDOLPH) and the Senator from Maine (Mr. MUSKIE), the distinguished chairmen of our committee and subcommittee, for their leadership during the development of this legislation. I also wish to pay tribute to the invaluable contributions of the Senator from Missouri (Mr. EAGLETON), the Senator from Delaware (Mr. BOGGS), the Senator from Kentucky (Mr. COOPER), and the Senator from Tennessee (Mr. BAKER).

Mr. President, I wish to echo what has been said about the bipartisan approach to this legislation. As a member of the subcommittee and as a conferee, I can attest that Senators on both sides of the aisle have participated on a nonpartisan basis.

I should like to ask the Senator from Maine to answer one question. Section 110 of the conference report requires the development of implementation plans by the various States, and the approval of such plans by the Administrator. Paragraphs 2 and 2(B) of the section, governing those plans, read as follows:

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan or each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

I should like to know if, in the opinion of the Senator from Maine, the term "transportation controls" is limited to motor vehicles.

Mr. MUSKIE. No; I think that that phrase ought to be considered in a much broader context, if we are to fully understand what the intent of the legislation is.

It seemed to the committee that transportation policies must be developed or improved to insure that the impact of pollution from all existing moving sources—automobiles, aircraft, trains, vessels, and so on—is reduced to the minimum compatible with the needs of each region.

For example, construction of urban highways and freeways may be required to take second place to rapid transit and other public transportation systems. The use of motor vehicles may have to be restricted and, in some congested areas, the number of operations of aircraft into an airport may need to be limited, or steps taken to reduce emissions while aircraft are on the ground.

If such controls are required, the committee believes the plan for implementation should so provide. If the plan is approved, Congress expects the Federal regulatory agencies to take the steps necessary to assure compliance with the plan; because what is involved in these greater urban areas, from the standpoint of air pollution, is the whole complex of residential patterns, employment patterns, and transportation patterns—the way in which people move about, go to their work, and live—and all of this ought to be subject to modification, and must be modified if the objective of clean air is to be achieved.

Mr. SPONG. I thank the Senator from Maine.

Mr. MUSKIE. Mr. President, I yield to the Senator from Delaware.

Mr. BOGGS. Mr. President, I thank the distinguished chairman.

I wish to express strong support for the conference report on these amendments to the Clean Air Act. This bill, I think, is the most far-reaching and important legislation for the control of air pollution ever to be considered by the Congress.

In time, it will bring our Nation clean air and a healthier environment.

It should be pointed out that this bill follows closely the concepts created in the legislation passed in September by the Senate. Further, it adheres in many details to the concepts and recommendations offered by the administration as long ago as last February.

Mr. President, I share the thoughts of the distinguished chairman of the subcommittee—I know how sincere and dedicated he is—when he stated that he regrets the partisan nature of the discussion of Secretary Richardson's letter. I share his feelings. I, too, am sorry that occurred. The chairman has pointed out, as have others, that we have maintained an absolutely bipartisan approach on environmental questions, certainly a major problem confronting our country. I have every confidence that it will continue to operate in a bipartisan manner. Therefore, I stand with the chairman of my subcommittee in regretting that the incident occurred.

In conclusion, Mr. President, I commend the leadership and cooperation offered by the distinguished chairman of the Committee on Public Works, Mr. RANDOLPH, the distinguished Senator from Maine (Mr. MUSKIE), the distinguished ranking Republican member of the committee, Mr. COOPER, the distinguished Senator from Tennessee (Mr. BAKER), and the distinguished Senator from Kansas (Mr. DOLE). Each has been most cooperative and helpful in studying a very difficult and complex subject. This legislation is going to involve not only the Federal Government but every other level of government—the States, the cities, the counties—as well as public and private organizations. In actuality, it will affect and benefit every individual in our country.

In addition, I wish to commend Representative STAGGERS of West Virginia, the chairman of the House committee, and the other conferees on the part of the House. And I thank the staffs of both the committees and the Members for their excellent assistance.

The conference was long and painstaking. It has produced a conference report that I believe will bring to the Nation effective control of air pollution. This bill is a credit to the country. I strongly commend it to my colleagues.

Mr. MUSKIE. I thank the Senator.

I yield to the distinguished Senator from Rhode Island.

Mr. PASTORE. Mr. President, I commend my distinguished colleagues, the Senate conferees, for the compromise legislative product which is now before us.

I would have liked to have had more opportunity to review the House-Senate conference report and all the details of these very important amendments to the Clean Air Act, but I recognize that expedition is mandatory if we are to deal with the major items of legislation still before the Senate at this session.

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I did take the time to study the bill carefully to ascertain that the new amendments to the Clean Air Act will not interfere with or change the present statutory framework and implementing regulations for controlling radiological effluents from nuclear facilities. The new Environmental Protection Agency and the Atomic Energy Commission now have certain authorities and responsibilities with respect to such matters as radiation protection standards or the regulation and control of radiological effects from nuclear facilities. Under our present statutes we have very excellently safeguarded health and safety in regard to the use and regulatory control of nuclear facilities, and in my

judgment it would have been unwise and potentially dangerous for a generally comprehensive legislative measure such as the one before us to dilute or interfere with our presently governing requirements.

I again want to congratulate my distinguished colleagues for bringing about this compromise, for doing a splendid job, and for rendering such an excellent public service.

Mr. MUSKIE. I thank the Senator from Rhode Island. He has accurately stated the effect of the bill on the point he has raised. I am happy to endorse his view of it.

I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, today the Senate members of the Conference Committee on the Clean Air Amendments of 1970 bring back for final action a bill which has been described as perhaps the most significant domestic legislation of the decade. The action today represents the culmination of a thorough exercise of the legislative process, beginning with 20 days of hearings in the subcommittee, followed by more than a dozen executive sessions of the subcommittee, more than 10 executive sessions of the full committee, 2 days of debate on the Senate floor in September and, finally, 12 conference meetings with the House in order to bring to the Congress this conference report.

I would like to note for the RECORD that the number of conference meetings with the House was in no way related to any attempt or desire to obstruct or delay on the part of any Member of the Senate or the House conferees. Rather, it simply reflects the degree of the differences between the House and Senate bill and the great scope of the legislation. Every Member had the same objective, and the conference report before the Senate is truly a historically significant bill.

Great credit is due to the cochairman of the conference committee of both Houses, Representative STAGGERS of West Virginia and Senator MUSKIE. Of course, special credit is due to Senator RANDOLPH, chairman of the Senate Committee on Public Works, and to Senator BOGGS, the ranking minority member of the subcommittee on Air and Water Pollution. But I would like to add that this conference was very well attended by all Members and I am especially proud that Senator BAKER and Senator DOLE on the minority side contributed so much in the development of this conference report.

The staffs of both committees also deserve special credit, for not only has the work been difficult and heavy with responsibility, but also, the parliamentary situation has compressed the time available and they have performed magnificently. Their work was most helpful, and I think their names should be placed in the RECORD.

It would be difficult to single out any provision in this bill for special attention. I think it represents a firm application of pollution control procedures, while at the same time being just and incorporating throughout, due process and fairness. The bill provides many procedural protections and involves the judicial branch of Government to a degree never before attempted in programs to achieve environmental quality.

The bill will place great responsibilities on nearly every aspect in our society. It certainly will place great burdens on industry, it will place great burdens on Government, both at the State and Federal level, and it will place great burdens on the people generally for they will ultimately have to bear the expense and, for the first time, possibly experience inconvenience so that we might achieve clean and healthful air. The provisions ask for the highest quality of Government

activity, and I am pleased that the bill will become law nearly coincident with the establishment by the President of the Environmental Protection Agency. The administration of that agency is entrusted to Mr. Ruckelshaus, who I believe is an excellent choice to control the exercise of the many duties and responsibilities of the Federal Government under this law.

With the passage of this bill the time for resolute action has come, action that must not be based on recrimination or punishment, but based on the fair application of the law. The burdens are great and I trust that the Federal Government, State government, industry, and the people will all work together to achieve this goal.

Mr. MUSKIE. I thank the Senator. As he has said, the staff work has been superlative throughout the consideration of this measure.

In addition to the work of committee, Chief Clerk Richard Royce, Minority Clerk Bailey Guard, and Counsel Barry Meyer, the staff of the subcommittee including Leon Billings, Dick Wilson, Dick Grundy, Phil Cummings, Becky Beauregard, Frankie Williams, Sally White, Eleanor Putz, and the minority staff including Tom Jorling, Harold Brayman, Adrien Waller, Hester Dungan, and Ann Brown are to be congratulated.

Several staff members of Senators were also essential in the development of this legislation including Eliot Cutler of my staff, Allen Jones of Senator SPONG's staff, Bob Maynard of Senator EAGLETON's staff, Jim Jordan of Senator BAKER's staff, and Ward White of Senator DOLE's staff.

Mr. BOGGS. I share your views of the staff and their performance. It has been terrific.

Mr. MUSKIE. Mr. President, I yield to the distinguished Senator from Wisconsin.

Mr. NELSON. Mr. President, I concur in the remarks made by the distinguished Senator from Kentucky.

My staff and I have had occasion from time to time to consult and work with members of the staff of the Air and Water Pollution Subcommittee. They are all superbly able and cooperative and are making a great contribution to the environmental problems presented to that subcommittee.

I did not know that the conference report was going to be brought up today, so I did not have an opportunity to prepare any remarks. However, I do wish to say that the committee members on both sides of the aisle are to be commended for coming up with such a landmark piece of legislation.

I particularly want to say that this bill is a great credit to Senator MUSKIE, whose record in terms of his concern, his activities, and his constructive efforts in the environmental field are unexcelled by anyone else in public life. Today we see before us another solid environmental achievement from Senator MUSKIE and a landmark piece of legislation. I join all those who are concerned about the environment in commending him for his tremendous contribution.

Mr. MUSKIE. I thank the distinguished Senator from Wisconsin. My greatest regret in the work of this committee was that the Senator from Wisconsin left the committee several years ago. Yet, he has not abandoned his interest in this field. Indeed, he has continued to be a leader nationally in all environmental questions. It is always helpful to have his close interest and attention—and even prodding from time to time—to help us in our work.

Mr. DOLE. Mr. President, I join my colleagues in urging approval of the conference report on the Clean Air Amendments of 1970.

We are all familiar with the need to prevent the further deterioration of

our air. Early this year, President Nixon devoted a major portion of his environmental message to the problem of air pollution.

The need was clear, and in response, the Subcommittee on Air and Water Pollution and the full Public Works Committee carefully considered and reported out a bill we felt would contribute to preserving and protecting our environment. Amendments were accepted on the Senate floor which improved that bill. But the legislation we have before us today combines the best elements of the House and Senate bills.

Everyone will not be completely satisfied with the final version of H.R. 17255, but it represents our best efforts to act with the knowledge available to us at this time in an affirmative but constructive manner. It is possible that we will face unanticipated problems in the future, but the Congress will have the opportunity to review the Clean Air Act upon its expiration.

I would point out that the passage of this act does not mean we will eliminate air pollution overnight. It would be impossible to physically accomplish that fact. But it does mean we have taken a

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substantial first step. It is now up to government at all levels, private industry, and every individual American to make this act work.

I commend my colleagues on the subcommittee and the full committee for their long but fruitful work on this important legislation, and urge approval of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

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CONFERENCE REPORT ON H.R. 17255, CLEAN AIR AMENDMENTS OF 1970

Mr. STAGGERS. Mr. Speaker, I call up the conference report on the bill (H.R. 17255) to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of December 17, 1970.)

Mr. STAGGERS. Mr. Speaker, I yield myself such time as I may consume.

The SPEAKER pro tempore (Mr. ALBERT). The gentleman from West Virginia is recognized.

Mr. STAGGERS. Mr. Speaker, I am gratified to bring to the House the conference report on the Clean Air Act Amendments of 1970. I am proud to say to the House that the conference report embodies clean air legislation which is stronger than the bills passed by either House.

I say this because the conferees after numerous and arduous working sessions have worked out a bill which promises to give to the American people clean air to breathe within the shortest feasible time.

The conferees have been guided by two principles: to do what is feasible and to do what is reasonable.

The bill passed by the other body incorporated many provisions which had not been included in the bill as passed by the House. The House conferees scrutinized carefully each of these provisions and applied to them

the test of reasonableness and feasibleness. On the basis of these two tests, many of these Senate provisions have been revised. The revisions, however, do not weaken those provisions. On the contrary, the revisions strengthen them because they make more likely that we shall achieve the desirable goals which these provisions were designed to achieve.

The conference report and the Statement of Managers are lengthy and complex documents. Let me point out briefly the highlights of the legislation.

First. With regard to automotive emissions, the legislation provides for statutory deadlines by which new automobiles must be substantially pollution free. These deadlines which apply to the 1975 and 1976 models are reasonable and, based on our best judgment, are also feasible. An independent body of experts—the National Academy of Sciences—is going to monitor the feasibility. If on the basis of the Academy's advice, the 1975 deadline cannot be met for carbon monoxide and hydrocarbons, the Administrator of the Environmental Protection Agency is authorized to grant a 1-year extension and to establish interim standards. A similar provision for a 1-year extension is contained in

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the legislation for the third important automotive pollutant—oxide of nitrogen. The Administrator, upon the advice of the Academy, may extend the statutory deadline from 1975 to 1976.

If after these extensions the companies are still not in a position to produce substantially pollution-free automobiles, it will be up to the Congress to determine what is to be done about this gravest of all air pollution problems which contributes about one-half of air pollution in the United States.

Second. Another complex issue with regard to automotive emissions involved the question whether the manufacturers should be required to warrant the performance of automobiles with regard to the achievement of emission standards for the useful life of automobiles—defined in the statute as 5 years or 50,000 miles. The legislation provides that the performance warranty will come into effect as soon as the Administrator finds that suitable road tests have been developed to test emissions from automobiles and as soon as adequate facilities are available to apply such road tests.

Third. The enforcement of air pollution regulations is partly the responsibility of the States and partly that of the Federal Government. The legislation provides that the Federal Government shall have primary responsibility for the enforcement of performance standards for new stationary sources and hazardous emissions from stationary sources. The States on the other hand will have primary responsibility for the enforcement of State plans and the emission limitations provided for in those plans with regard to existing stationary sources. There was a provision in the bill as passed by the other body calling for precertification of new stationary sources. This provision was dropped as impractical.

Fourth. A provision which has received a lot of attention deals with citizen suits. The legislation will permit such suits against polluters as well as against the Administrator. However, citizen suits against the Administrator will be limited to those duties which are mandatory under the legislation and the suits will not extend to those areas of enforcement with regard to which the Administrator has discretion.

Fifth. Many Members of Congress have received communications with regard to a provision dealing with the compulsory licensing of patents. The

legislation has modified substantially a provision on this subject contained in the bill as passed by the other body. Under the legislation the Attorney General will be authorized to seek compulsory licenses if he determines that the failure to make such licenses available under any patent makes impossible the achievement of air pollution limitations and results in a restraint of trade or a monopoly. In these exceptional cases, the Attorney General would go to court seeking the licenses and requesting the court to establish reasonable terms and conditions for such licenses.

I have touched on the provisions in the legislation which have received the greatest attention and I shall be glad to answer any questions which the Members may have with regard to this important legislation.

I want to say to the Members that this legislation has received the most careful consideration by the committees in the House and in the other body and by the conferees. All of the House Members of the conference committee, JOHN JARMAN of Oklahoma, PAUL ROGERS of Florida, WILLIAM SPRINGER of Illinois, and ANCHER NELSEN of Minnesota, contributed greatly to making this legislation possible. Particular credit must go to PAUL ROGERS of Florida, who proposed some of the important provisions contained in the conference report. Among the Senate conferees, Senator MUSKIE of Maine and Chairman RANDOLPH of West Virginia, were most helpful. Congress and the Nation owes all of these men a great debt. Last but not least, I want to say that this legislation would not have been possible without the outstanding cooperation between the committee staffs of the Senate and House committees, and they too are to be commended for working long hours and suggesting alternative ways in which the many differences between the bills passed by the two Houses might be resolved.

In conclusion, let me say that I consider this one of the most important pieces of legislation that this Congress has an opportunity to enact. It will affect every man, woman, and child in this Nation and hopefully it will contribute substantially to improving our environment which unfortunately we have neglected for far too long.

Mr. KYL. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Iowa.

Mr. KYL. Mr. Speaker, one of the great problems we have had in mounting a meaningful environment program has been the fragmentation of responsibilities. Is the chairman of the committee satisfied that the enforcement provisions of this act are now sufficiently centralized so that we can also pinpoint the responsibilities of the Federal agencies?

Mr. STAGGERS. Yes. That was one of the great concerns of all the conferees, and I am satisfied on this point.

Mr. KYL. Mr. Speaker, if the gentleman will yield further, I would hope that the distinguished gentleman from West Virginia may now, having done such a great job, use his great influence in this body to achieve a similar centralizing of authority and responsibility at the House of Representatives level where the responsibilities are still unfortunately very fragmented.

Mr. ROUSSELOT. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from California.

Mr. ROUSSELOT. Mr. Speaker, can the Chairman assure us that in the case of California, which this year enacted additional and stricter laws in the field of air pollution, California will not now be required to come to

the Department of Health, Education, and Welfare and obtain a waiver in order that those laws can be implemented?

Mr. STAGGERS. I might answer the gentleman this way: California required a waiver only with regard to new automobiles. With regard to aircraft the Federal Government would preempt the field, however.

Mr. ROUSSELOT. My understanding was that it was only in the case of aircraft. In other words, the Federal Government is now in effect preempting the State of California in the field of aircraft, but it does not apply in the field of automobiles.

Mr. STAGGERS. The State is free with regard to fuels, stationary sources, and used automobiles. California is preempted in the field of aviation. That is right.

Mr. ROUSSELOT. So those laws that were put on the books this year by the State of California and, in fact, which are stricter and more rigid than the national criteria will not, in fact, be preempted by this legislation.

Mr. STAGGERS. The only exception I know of is the exception of aircraft, and the waiver requirement in case of new automobiles.

Mr. ROUSSELOT. I thank the gentleman.

Mr. CORMAN. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from California.

Mr. CORMAN. May I inquire as to the composition of fuel. It is my understanding California has a different requirement concerning the composition of fuel than that established under the Federal regulation. Will the State of California continue to be in a position to exercise police power in that field of the composition of fuel?

Mr. STAGGERS. We must distinguish between fuels used in stationary sources and fuels used in motor vehicles. With regard to fuels used in stationary sources, all States are completely free to adopt and enforce more stringent emission standards.

With regard to motor vehicle fuels, all States with the exception of California, are preempted from imposing more stringent fuel standards. But the other States, subject to the approval of the Administrator, may include in their State plans standards for motor vehicle fuels if such standards are necessary to achieve air quality standards.

Mr. CORMAN. I thank the gentleman.

Mr. HOLIFIELD. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I am happy to yield to the gentleman from California.

Mr. HOLIFIELD. I thank the gentleman for yielding. I should like to have an exchange with him on a different subject matter which pertains to the functions of the Joint Committee on Atomic Energy and its statutory responsibilities.

I believe that the conference report is satisfactory, and I believe I can conscientiously support it.

In the Senate report there were two words which referred to "radioactive substances." As I understand it, the conference report is the report which now obtains, so far as consideration is concerned, and that the conference report does not have those two words referring to "radioactive substances"; is that true?

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Mr. STAGGERS. In the conference report there was no reference whatsoever to them.

Mr. HOLIFIELD. Under these circumstances I assume the same conference report is being presented in the other body.

Mr. STAGGERS. That is correct.

Mr. HOLIFIELD. I understand that the bill before us would not encompass the radiological aspects of nuclear fa-

cilities. I refer now to the nuclear plants of the Government. I also understand that the authorities and responsibilities of the Environmental Protection Agency and the Atomic Energy Commission with respect to such matters as radiation protection standards from nuclear facilities would remain unchanged by virtue of the bill now before us.

Mr. STAGGERS. That is correct, because of the fact that this radiation was not considered in the air pollution.

Mr. HOLIFIELD. The gentleman understands that the functions of the Federal Radiation Council were transferred by the presidential plan over into the Environmental Protection Agency, and they have now taken over these functions. Therefore, we will have to look to the Environmental Protection Agency to perform those particular functions transferred from the Atomic Energy Commission.

I just wanted to be sure that this Clean Air Act did not interfere with those functions of the Federal Radiation Council now transferred by presidential plan into the Environmental Protection Agency or those functions remaining in the Atomic Energy Commission.

Mr. STAGGERS. That is correct, so far as this bill is concerned.

Mr. HOLIFIELD. I thank the gentleman.

I also thank the gentleman and the conferees for protecting the right of California in respect to automobile emissions to have stricter standards than those required in other places in the Nation because of the peculiar atmospheric conditions in California. I appreciate the cooperation of the conferees.

Mr. HECHLER of West Virginia. Mr. Speaker, will the gentleman from West Virginia yield?

Mr. STAGGERS. I am happy to yield to my colleague from West Virginia.

Mr. HECHLER of West Virginia. I want to commend the gentleman from West Virginia for his leadership in bringing out the conference report on this outstanding piece of legislation. As the gentleman knows, in our State we have had long and frustrating experiences in attempting to curb air pollution. In my congressional district in the mid-Ohio Valley, we started 5 years ago to set the official machinery in motion to control air pollution in the Vienna, W. Va., area. Air pollution abatement conferences were held in Vienna, W. Va., in 1967 and 1969.

Several air pollution abatement conferences have been held in West Virginia, and also interstate conferences involving air pollution along the borders of Ohio and West Virginia. Recommendations have resulted from these conferences. Since the new act does away with this conference procedure, do we have to start all over again, or will these conference recommendations still be enforced by the National Air Pollution Control Office?

Mr. STAGGERS. Any of the conferences that have been held and that have made recommendations will not be affected at all.

Mr. HECHLER of West Virginia. I thank the gentleman for this clarification. We certainly should not throw out the results of all the work which has gone forward in these abatement conferences.

It would be useful to ascertain the periodic progress which the automobile manufacturers are making, including funds expended, toward meeting the 1975 and 1976 deadlines prescribed in the act. In the requirement of the act that the Administrator report annually to Congress, will the committee insure that progress reports are also required from the automobile manufacturers?

The public and the Congress are entitled to know precisely how far the companies are progressing, particu-

larly since they fought and lobbied so hard against any provision of this nature. Since they contended they could not meet the deadlines, the companies will be probably eager to prove that they cannot meet the deadlines. The point I am making is that we ought to be sure that we know how much money is being spent and specifically what the companies are doing so that we do not wake up in 1975 and discover they have not met the deadlines? What is there in the bill beyond requiring the Administrator to report to Congress every year?

Mr. STAGGERS. Not only that, but we have an additional safeguard. We have directed the Administrator to make arrangements with the National Academy of Sciences to monitor every thing and to make progress reports to the Congress beginning July 1, 1971.

Mr. HECHLER of West Virginia. May I pose one further question?

Mr. STAGGERS. Yes.

Mr. HECHLER of West Virginia. The Department of Health, Education, and Welfare has had a number of State implementation plans before it since May of this year, and so far none of them have been approved. The delay since May implies that these State plans do not meet the Federal requirements, and I wonder if this means that the Environmental Protection Agency under the new legislation will be promulgating a Federal implementation plan at an early date?

Mr. STAGGERS. Let me say this: Any plan submitted under existing law may be approved under the new law but the Administrators may require appropriate revisions of the plan to meet the new law.

Mr. HECHLER of West Virginia. I thank the gentleman from West Virginia. I would hope that the committee could plan hearings to find out how this Administrator plans to implement this law, because it is a very complicated piece of legislation.

Mr. STAGGERS. I can assure you of that.

Mr. HECHLER of West Virginia. I also hope at some time in the near future, a year or less from now, if the act can be strengthened the committee will recommend amendments to this act.

Mr. STAGGERS. We hope to get reports every year.

Mr. HECHLER of West Virginia. I commend my colleague from West Virginia and the gentleman from Florida (Mr. ROGERS) and others who brought in this excellent report.

The Administrator has been given wide discretion in dealing with the emissions of highly hazardous substances. I would hope that in this area the Administrator will vigorously enforce the act to the point of setting zero emission levels for these highly hazardous substances, which should be listed and defined. A great deal also must be done to define more explicitly the precise standards involved in the 90-percent reduction of carbon monoxide hydrocarbons and oxides of nitrogen which will be applicable in 1975 and 1976.

Mr. Speaker, our Nation has had a sad and frustrating history of weak-kneed inaction by those who have been charged with protecting the divine right of every citizen to breathe clean air. Not only have the laws been weak and shot through with loopholes, but the underfunded administration of legislation to combat air pollution has been ineffective. We have allowed the excuse of expanding technology and production to over-ride the paramount interest of the average citizen in protecting the environment and the air we breathe.

Now I hope the pendulum will swing dramatically and drastically in the opposite direction. The very survival of human life on earth depends on the ability to breathe. We are getting choked with air pollution. Now that this excellent piece of legislation

has been passed, the challenge is clearly how well the act will be administered. At the highest level of Government, leadership is demanded in order to protect clean air. The President of the United States must insist that this act be administered forcefully, fearlessly, and where any benefit of the doubt exists it should be resolved in favor of clean air and against those who pollute the air. We can no longer afford the pussyfooting, artful dogging, delays, end runs, and outright flouting of the intent of the legislation which has characterized the history of air pollution control. I trust that the President and the Environmental Protection Agency will seize this challenge and thus protect the right of every citizen to breathe clean air.

Mr. STAGGERS. Mr. Speaker, I yield such time as he may use to the gentleman from Illinois (Mr. SPRINGER).

Mr. SPRINGER. Mr. Speaker, I thank the gentleman for yielding.

I think I might outline for my colleagues the fundamental points that were involved in this conference.

First of all, I would like to say that this conference went on beginning back before the election in November. We were on this in conference for some 3

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months. This gives you some idea of the amount of time consumed in working out differences. There has never been a conference in the 20 years that I have been a member of this committee where there was more consideration given to a bill than there was to this bill.

Second, most of the differences between the two bills on stationary sources of pollution are matters of language and emphasis. They were worked out to keep the basic framework of the House bill. I do not need to go into detail in trying to explain the results that we achieved. It does no violence to what was done here in the original bill.

The big difference between the House and the Senate position on automotive emission standards was this: The absolute deadline of 1975 for a 90-percent reduction imposed by the Senate bill is retained. A 1-year extension is possible, as it was under the Senate bill. The House did insist upon an adequate lead time for the industry to request an extension.

Third, aircraft emissions will be entirely under Federal control. That is preempted to the Federal Government.

Fourth, patents cannot be taken over by compulsory licenses except in the most compelling circumstances and with the agreement of the Attorney General and the U.S. District Court.

Fifth, citizens suits may be instituted against Federal installations and also against violators.

Citizen suits may be instituted against the administrator only for failure to act where he must. In other words wherever he is given discretion in the act, he may may not be sued. He may be sued only for those matters imposed in the bill upon the administrator as a matter of law.

Lastly, Mr. Speaker, I would like to compliment the chairman, my distinguished colleague from Oklahoma (Mr. JORDAN), the distinguished gentleman from Minnesota (Mr. NELSEN), and also the distinguished Senator from Tennessee (Mr. BAKER), the distinguished Senator from Delaware (Mr. BOGGS), the distinguished Senator from Kentucky (Mr. COOPER) and the distinguished Senator from Missouri (Mr. EAGLETON) for the fine contributions that they all made.

May I say that if these members of the conference had not introduced compromises upon which we could have agreed, we never would have

been able to finish this conference. I think all of the gentlemen whom I have named have made contributions, in addition to those who have been mentioned by the chairman previously.

Mr. Speaker, in view of the difficulties that we had in this conference. I have never run into anything like it in my entire experience such as we had in this conference. I want to say that I believe we came back with the very best bill that possibly could have been agreed to considering all of the difficulties we had in resolving the differences between the House and the other body.

Mr. NICHOLS. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the distinguished gentleman from Alabama.

Mr. NICHOLS. I thank the chairman very much. I appreciate the chairman yielding to me.

I, too, want to compliment the distinguished chairman of the committee upon this very fine report which I certainly feel will be very meaningful in the years ahead.

I would like to ask a question of the chairman, if I may.

I am sure the distinguished chairman would recognize and agree with me, I hope, that many automobile improvements in the efficiency and the safety of motor vehicles have resulted from experience gained in operating motor vehicles under demanding circumstances such as those circumstances encountered in motor racing. I refer to the tracks at Talladega in my own State, to Daytona and Indianapolis, competition.

I would ask the distinguished chairman if I am correct in stating that the terms "vehicle" and "vehicle engine" as used in the act do not include vehicles or vehicle engines manufactured for, modified for or utilized in organized motorized racing events which, of course, are held very infrequently but which utilize all types of vehicles and vehicle engines?

Mr. STAGGERS. In response to the gentleman from Alabama, I would say to the gentleman they would not come under the provisions of this act, because the act deals only with automobiles used on our roads in everyday use. The act would not cover the types of racing vehicles to which the gentleman referred, and present law does not cover them either.

Mr. ROGERS of Florida. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I am happy to yield to the distinguished gentleman from Florida.

Mr. ROGERS of Florida. Mr. Speaker, I simply want to commend all who participated in the conference. It was a long and difficult conference. We have a significant bill.

The fact that the Congress in this legislation has committed itself in the strongest possible terms to bringing about clean air in America is of paramount importance. If when the President signs the bill—and I hope and believe that he will—then the President will commit the administration to the same degree that the Congress is committed to bring about clean air, and we will have clean air in this Nation.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. Yes, I am happy to yield to the gentleman from Iowa.

Mr. GROSS. Since racing cars are apparently exempt from this legislation, would O. Roy Chalk's buses also be exempt?

Mr. STAGGERS. No, they certainly are not because they run on the highways.

Mr. GROSS. I certainly would hope not.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Speaker, as I understand, this grants 5 years for allowing the automobile industry to set instruments in the automobiles which will prevent the emission of foul air. If that is the case, I want to ask the able gentleman whether it is absolutely necessary to allow that long a period of time?

Mr. STAGGERS. I will say to the gentleman from Florida that even under present law emissions from automobiles have been steadily decreasing. The question is how soon can we have substantially pollution-free automobiles. Once we have the technology, and we may not have it at present as the manufacturers contend, it takes at least 24 months, really, before the cars so equipped can start rolling off the assembly line.

The legislation gives them enough leadtime to build the best available technology into the 1975 model cars. The manufacturers have to make their plans in 1972 for the 1975 model cars. We give them 1 year leeway if they cannot achieve the statutory standards in those models. So they really do not have very much leeway.

Mr. PEPPER. So the able gentleman feels that we have done the very best job we could on this?

Mr. STAGGERS. That is correct.

Mr. PEPPER. I thank the gentleman.

Mr. ANDERSON of California. Mr. Speaker, I rise in support of the conference report on H.R. 17255, the Clean Air Act amendments.

Over the years, I have become increasingly convinced that such legislation should have a top congressional priority. Pollution is getting more serious every day. This is evidenced both by people's mounting concern about the perils and the costs of air pollution, and the increasing body of medical evidence that contaminated air endangers the health and well-being of man.

This year, we hurled 149 million tons of pollutants into the air; last year, we dumped 130 million tons into the atmosphere.

Concern about the deterioration of the air manifests itself among the people in the 17th Congressional District of California that I am privileged to represent. The recent campaign and the questionnaires that I have sent out, show that the great majority of the people I have talked to and corresponded with, consider air pollution to be a most critical problem.

That the situation is deplorable is shown by the fact that air pollution costs the United States over $12 billion annually. Dirty air ruins crops and vegetables; causes steel in bridges, rails, and ships to deteriorate; and it causes buildings and clothing to age more rapidly. But the cost in dollars is not the worst of it. Dirty air is shortening our lives and damaging our health.

The menace of prolonged air inversions has increased the rates of death —especially among our elderly citizens. Doctors have been documenting, with increased frequency, that repeated exposure for prolonged periods to unclean air can severely damage a person's health. Medical evidence has associated air pollution with higher rates of serious illness and mortality from asthma, em-

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physema, lung cancer, chronic bronchitis, and heart disease.

Mr. Speaker, we know that automobile emissions account for 87.7 percent of the air pollution in the Los Angeles Basin. While the relation of the automobile to air pollution has long been known, little has been done by automobile manufacturers to alleviate the problem. Rather, many of us have contended that they have stalled research which might have helped to clear our skies, except when Govern-

ment pressure has been brought to bear.

The bill before us now—the Clean Air Act—is designed to correct this situation. It has a provision which requires that automobiles manufactured in 1975 and thereafter, produce at least 90-percent less emissions than the 1970 model.

A number of us attempted to amend H.R. 17255 to include this provision when it was before the House of Representatives in June of this year. We were narrowly defeated; however, Senator MUSKIE was successful in the Senate.

I was extremely pleased when it was announced on October 8 that this provision had been adopted by the conferees. Then, on October 17, the administration made a futile effort to dissuade the conferees. I am grateful that the conferees rejected the auto industry's position as espoused by the administration.

This is not only a great victory for the health of our country and for our environment; it is a great personal victory for those who have worked for so long to clean up our air. The efforts of the House conferees cannot be exaggerated. Chairman STAGGERS, Congressman JARMAN, Congressman PAUL ROGERS, Congressman SPRINGER, and Congressman NELSON deserve our praise and our thanks.

The public is angry and upset, and rightfully so, because it realizes that the black pall hanging over our cities is not only unnatural, it is unhealthy and uncomfortable.

Detroit had best realize that not only is pollution in the air, but that legislation for its correction is in the wind.

Mr. RYAN. Mr. Speaker, the adoption of the conference report on H.R. 17255, the Clean Air Act Amendments of 1970, should signal a massive assault on air pollution—an assault which some of us have long urged, and which is possible now that the public has become aroused to the perils posed by the degradation of our environment.

On June 10, the House passed H.R. 17255. At the time, it was inadequate —a half step where 10 giant steps were required. In order to register our dissatisfaction with that bill, as it passed the House, a number of us introduced legislation, entitled the Air Pollution Abatement Act of 1970, which incorporated the much stronger provisions of the Senate-passed Clean Air Act amendments. This bill is H.R. 19706. Our purpose was to exert pressure on the House conferees by demonstrating that we demanded strong, effective action.

The bill which has emerged from the conference committee makes possible such action. Without analyzing the details of the conference report, I would point out that among its major provisions is that largely banning polluting automobile emissions after 1975, with no more than 1 year's extension to 1976 on that ban. The Congress is starting to drop the rhetoric and demand results. Since I came to this House in 1961, I have been pushing for meaningful antipollution legislation; legislation such as that reported out of the conference committee is indeed welcome after these years of effort.

I do want to discuss in some length title IV of the bill, because this deals with an aspect of our environment which only recently has begun to receive widespread attention—that is, noise pollution. Title IV of the bill is entitled "Noise Pollution and Abatement Act of 1970." It directs the Administrator of the Environmental Protection Agency to establish an Office of Noise Abatement and Control for the purpose of investigating and identifying the sources of noise and its effects on public health and welfare, and to report to the President

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and Congress within 1 year of enactment the results of the investigation and study. Thirty million dollars is authorized to carry out title IV.

I am particularly concerned about this title because, in the House, I have introduced the Noise Control Act of 1970—H.R. 15473. Subsequent to my initial introduction of it on January 20, 1970, 22 of my colleagues joined me when I reintroduced this bill as H.R. 16520 and H.R. 16708.

My bill would have established an Office of Noise Control within the Office of the Surgeon General of the United States. A chief function of the office would be to act as a clearing house for all information on noise—its causes and effects, its prevention, its control, and its abatement. On request, the office would make this material available to States, local governments, and private groups interested in the problem of noise and its abatement.

In addition, the bill would provide for grants to States, local governments, commissions, and councils for programs of noise control—research into the effects of noise, the investigation of existing causes of excessive noise in our society, and research into new ways of controlling, preventing, and abating noise.

The bill also would provide for research grants to public or nonprofit private agencies, organizations, and institutions. Grants would also be provided for training of professional and technical personnel in methods to effect proper control, prevention, and abatement of noise.

The Noise Control Act of 1970 would also provide for a Noise Control Advisory Council, which would advise the Director of the Office of Noise Control of his responsibilities, and would review all proposed project grants. This Council would be made up of nine individuals interested in the problems of noise and its control, who are skilled in the fields of medicine, psychology, government, law or law enforcement, social work, public health, or education.

Since I introduced the Noise Control Act of 1970, Reorganization Plan No. 3 of 1970, creating the Environmental Protection Agency, went into effect. Therefore, it is appropriate that the Office of Noise Abatement and Control created by title IV of the Clean Air Act amendments be placed in that agency. I do recommend that grants for research, for professional and technical training, and for demonstration projects be made as outlined in my original bill.

The problem of noise pollution demands attention. It is an increasing factor in even the simple amenities of urban living; the intrusiveness of noise pervades virtually every urban home. But inconvenience aside, noise pollution poses a peril to human health. Consequently, the inclusion of title IV in the Clean Air Act amendments, as reported out of the conference committee, is particularly welcome.

Mr. VANIK. Mr. Speaker, I want to take this opportunity to commend the conferees on the part of the House for their work on H.R. 17255, the Clean Air Amendments of 1970.

On June 10, 1970, the House of Representatives passed a good clean air bill. But in the last week of July the eastern half of the Nation was "attacked" by a blanket of smog that demonstrated—if we did not fully realize it before—the enormity of the air pollution problem facing the Nation.

As a result of the demonstration of the severity of the air pollution problem—literally a matter of life and health—the Senate passed a much stronger Clean Air Act of September 22. This bill required a 90-percent reduction of pollutants from automobiles by 1975–76. Automobile pollution

is the most serious source of contaminants in our Nation's—and the world's—air. In urban centers, the automobile is estimated to cause between 60 and 85 percent of the pollution in our cities. The House bill failed to set a definite timetable for the reduction of auto emissions. As the conferees on the part of the House themselves note:

The House bill did not amend the provisions of existing law relating to the establishment of standards for new motor vehicles. The Senate amendment deleted the requirements that such standards be based on a test of technical and economic feasibility, and provided statutory standards for passenger cars and required that such standards be achieved by a date certain.

Although the bill in its final form provides for a possible 1-year extension for meeting these deadlines, the Congress has finally given the American people a clean air bill that has teeth, that has force, that will be meaningful and which will result in noticeably lower levels of air pollution in this decade.

Human health and comfort has been placed in the priority in which it belongs—first place.

There can be no doubt that we possess the technology needed to develop a clean car and a car that can meet the emission standards set by this act.

If anyone doubts that fact, they need only consider the results of the Third Annual Trans-Continental Clean Car Race. This coast to coast race was won by an ordinary 1970 model car that had its exhaust system modified by four part-time night students at Wayne

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State University. These students put together an exhaust system that beat the pollution standards that the Federal Government had been proposing for 1980 model cars. If four students can accomplish this, I am sure that the auto industry, with all its massive resources, will be able to do even better—if it really tries.

Again, Mr. Speaker, I want to commend the House conferees for agreeing to accept the stronger Senate-passed provisions in so many cases. Their action, and the action of the Congress in passing this bill will be—next to solving the dread disease of cancer—the single most important thing that the Congress can do to improve the health of the American people.

I also want to thank those 43 other Members of the House who joined with me in introducing in the House the Senate-passed version of the Clean Air Act. Forty-four of us introduced this bill as an indication of the concern in this Chamber for the strongest possible bill. Of those sponsoring the Senate-passed version in the House, I would particularly like to commend our retiring colleague, LEONARD FARBSTEIN of New York, for his hard work in this area. He was one of the leaders in the House on June 10th in the effort to strengthen the bill then before the House. He is one of those who joined me in cosponsoring the Senate bill in October. The list of cosponsors follows:

COSPONSORS

Mr. Addabbo, Mr. Bell, Mr. Brasco, Mr. Brown of California, Mr. Button, Mrs. Chisholm, Mr. Clark, Mr. Clay, and Mr. Conyers.

Mr. Donohue, Mr. Edwards of California, Mr. Eilberg, Mr. Farbstein, Mr. Fascell, Mr. Fraser, Mr. Gaydos, Mr. Gude, Mr. Halpern, Mr. Harrington, and Mr. Hechler of West Virginia.

Mr. Koch, Mr. Lowenstein, Mr. Madden, Mr. McCloskey, Mr. Mikva, Mr. Moorhead, Mr. Olsen, Mr. Ottinger, Mr. Patten, Mr. Pike, Mr. Podell, and Mr. Price of Illinois.

Mr. Reid of New York, Mr. Rees, Mr. Reuss, Mr. Rodino, Mr. Rosenthal, Mr. Ryan, Mr. Scheuer, Mr. Schwengel, Mr. Tunney, Mr. Vanik, Mr. Wolff, and Mr. Yates.

Mr. STAGGERS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

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1.1k(5) THE PRESIDENT'S REMARKS UPON SIGNING THE BILL INTO LAW

Dec. 31, 1970, Weekly Compilation of Presidential Documents. Vol. 6, No. 1, January 4, 1971 (pp. 11–12)

CLEAN AIR AMENDMENTS OF 1970

The President's Remarks Upon Signing the Bill Into Law. December 31, 1970

Ladies and gentlemen:

On the last day of the year, 1970, I think it would be appropriate to make a very few remarks with regard to this piece of legislation that I will now be signing, the Clean Air Act of 1970.

And I see in this room a few who were present in San Clemente on the first day of 1970 when I said that this would be the year of the environment, that it was now or never if we were to clean up the air and clean up the water in major parts of the United States and to provide the open spaces that are so important for the future generations in this country.

The year 1970 has been a year of great progress in this field. In February, you will recall that I submitted the most comprehensive message on the environment ever proposed by a President of the United States. During the year, there have been some administrative actions, some legislative actions.

Time, however, has been required for the Congress to consider the proposals of the administration and, finally, to agree on the legislation that will be sent to the President for signature.

This is the most important piece of legislation, in my opinion, dealing with the problem of clean air that we have this year and the most important in our history.

It provides, as you know, for provisions dealing with fuel emissions and also for air quality standards and it provides for the additional enforcement procedures which are absolutely important in this particular area.

How did this come about? It came about by the President proposing. It came about by a bipartisan effort represented by the Senators and Congressmen who are here today in acting. Senator Randolph, Senator Cooper, and Congressman Springer represent both parties and both Houses of the Congress.

And I thank the Congress, and the country owes a debt to the Congress in its closing days, for acting in this particular field.

I would say, however, that as I sign this piece of legislation, it is only a beginning, because now comes the enforcement and that

allows me to comment briefly upon how we in the administration are set up to handle the problems of the environment in the years ahead.

We have, first, the Environmental Quality Council under the Chairmanship of Russell Train. That Council advises the President on the policies which should be recommended to the Congress and to the Nation. And consequently, as I submit new recommendations, and there will be very significant new recommendations submitted to the Congress early in the next session on the environment, those recommendations will be the result of the actions that the Council has taken and its studies and its proposals.

And there is the Environmental Protection Agency, which has been established by the Congress, where Mr. Ruckelshaus is the man responsible. And that is the enforcement agency. He enforces those proposals that, first, are recommended by the Council, submitted by the President to the Congress, enacted by the Congress, and then become the law.

So, we have the enforcement agency on the one side. We have the policy agency on the other. We have the legislative branch of the Government, both parties represented here, and, of course, the President in the primary role of having to submit the legislation and then backing up those who have the responsibility for enforcing it.

If I can summarize briefly, I think that 1970 will be known as the year of the beginning, in which we really began to move on the problems of clean air and clean water and open spaces for the future generations of America.

I think 1971 will be known as the year of action. And as we look at action, I would suggest that this bill is an indication of what action can be, because if this bill is completely enforced within 4 years, it will mean that the emissions from automobiles which pollute the environment will be reduced by 90 percent.

And the problem of automobile pollution, as we know, is one that not only now plagues my native area of Southern California, but all the great cities of this Nation, particularly those which have heavy automobile traffic, and most of the great cities of the world have similar problems.

So, what we are doing here is, first, by signing this legislation, to provide the tools through which we can have action to avoid the dangers that continuing air pollution by automobiles and through other methods will be going forward.

[p. 11]

So, it seems very appropriate that in this room, the Roosevelt Room, a room that is named for both Roosevelts, Franklin Roosevelt and Theodore Roosevelt, but particularly in view of the fact that Theodore Roosevelt, who was the man most remembered in American history for his interest in conservation, his interest in the environment, that this bill is being signed here; this, it seems to me, is most appropriate.

And I would only hope that as we go now from the year of the beginning, the year of proposing, the year 1970, to the year of action, 1971, that all of us, Democrats, Republicans, the House, the Senate, the executive branch, that all of us can look back upon this year as that time when we began to make a movement toward a goal that we all want, a goal that Theodore Roosevelt deeply believed in and a goal that he lived in his whole life. He loved the environment. He loved the clear air and the open spaces and he loved the western part of the United States particularly, which will be greatly affected by this kind of action.

And as we sign this bill in this room, we can look back and say, in the Roosevelt Room on the last day of 1970, we signed a historic piece of legislation that put us far down the road toward a goal that Theodore Roosevelt, 70 years ago, spoke eloquently about, a goal of clean air, clean water, and open spaces for the future generations of America.

[p. 12]

1.1*l* TECHNICAL AMENDMENTS TO THE CLEAN AIR ACT
November 18, 1971, P.L. 92–157 §302, 85 Stat. 464

Public Law 92–157
92nd Congress, H. R. 8629
November 18, 1971

AN ACT To amend title VII of the Public Health Service Act to provide increased manpower for the health professions, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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[p. 1]

TITLE III—MISCELLANEOUS

[p. 33]

* * * * * * *

TECHNICAL AMENDMENTS TO THE CLEAN AIR ACT

SEC. 302. (a) Section 307(a)(1) of the Clean Air Act is amended by striking out "210(c) (4)" and inserting in lieu thereof "211(c) (3)".

(b) Section 113(b) (2) of such Act is amended by inserting "(A)" before "during", and by inserting ", or (B)" after "assumed enforcement".

(c) Section 113(c) (1) (A) of such Act is amended by inserting "(i)" before "during" and by inserting ", or (ii)" after "assumed enforcement".

(d) Section 211(c) (3) (A) of such Act is amended by inserting "obtaining" after "purpose of".

(e) Section 211(d) of such Act is amended by striking out "under subsection (c)," at the second place it appears and inserting in lieu thereof "under subsection (b)".

(f) The first sentence of section 111(b) (1) (B) of the Clean Air Act is amended by striking out "purpose" and inserting in lieu thereof "publish proposed".

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1.1*l*(1) HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

H. R. REP. No. 92-258, 92d Cong., 1st Sess. (1971)

[No Relevant Discussion of Pertinent Section]

1.1*l*(2) SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

S. REP. No. 92-251, 92d Cong., 1st Sess. (1971)

[No Relevant Discussion of Pertinent Section]

1.1*l*(3) COMMITTEE OF CONFERENCE

H.R. REP. No. 92-578, 92d Cong., 1st Sess. (1971)

[No Relevant Discussion on Pertinent Section]

1.1*l*(4) CONGRESSIONAL RECORD, VOL. 117 (1971)

1.1*l*(4)(a) July 1: Considered and passed House

[No Relevant Discussion on Pertinent Section]

1.1*l*(4)(b) July 14: Considered and passed Senate, amended in lieu of S. 934

[No Relevant Discussion on Pertinent Section]

1.1*l*(4)(c) Oct. 19: Senate agreed to conference report

[No Relevant Discussion of Pertinent Section]

1.1*l*(4)(d) Nov. 9: House agreed to conference report

[No Relevant Discussion of Pertinent Section]

1.2 PUBLIC CONTRACTS, ADVERTISEMENTS FOR PROPOSALS FOR PURCHASES AND CONTRACTS FOR SUPPLIES OR SUPPLIES FOR GOVERNMENT DEPARTMENTS; APPLICATION TO GOVERNMENT SALES AND CONTRACTS TO SELL AND TO GOVERNMENT CORPORATIONS

As amended, 41 U.S.C. §5 (1958)

[Referred to in 42 U.S.C. §1857b–1(a)(2)(D)]

(See, General 1.14" for legislative history)

41 § 5

Unless otherwise provided in the appropriation concerned or other law purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $2,500, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638

of Appendix to Title 50, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only. R.S. § 3709; Aug. 2, 1946, c. 744, § 9(a), (c), 60 Stat. 809; June 30, 1949, c. 288, Title VI, § 602(f), formerly Title V, § 502(e), 63 Stat. 400, renumbered Sept. 5, 1950, c. 849, §§ 6(a), (b), 8(c), 64 Stat. 583; Aug. 28, 1958, Pub.L. 85–800, § 7, 72 Stat. 967.

1.3 ADVANCES OF PUBLIC MONEYS, PROHIBITION AGAINST, AS REVISED, 31 U.S.C. §529 (1956)

[Referred to in 42 U.S.C. §1857b–1(a)(2)(D)]

31 § 529

No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected. R.S. § 3648; Aug. 2, 1946, c. 744, § 11, 60 Stat. 809.

1.3a ADVANCES OF PUBLIC MONEYS; PROHIBITION AGAINST

August 2, 1946, R.S. §3648, §11, 60 Stat. 809

SEC. 11. The first sentence of section 3648 of the Revised Statutes (31 U.S.C. 529) is hereby amended to read as follows:

"No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law."

1.3b E.O. 10410, SPECIFICATION OF LAWS FROM WHICH THE ESCAPEE PROGRAM ADMINISTERED BY THE DEPARTMENT OF STATE SHALL BE EXEMPT

November 14, 1952, 17 Fed. Reg. 10495

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10410

SPECIFICATION OF LAWS FROM WHICH THE ESCAPEE PROGRAM ADMINISTERED BY THE DEPARTMENT OF STATE SHALL BE EXEMPT

By virtue of the authority vested in me by section 532 of the Mutual Security Act of 1951, as added by section 7(m) of the Mutual Security Act of 1952 (Public Law 400, approved June 20, 1952, 66 Stat. 146), it is hereby determined that the performance of functions with respect to the escapee program, authorized by section 101(a) (1) of the Mutual Security Act of 1951, as amended, and administered by the Department of State, without regard to the three following-designated provisions of law will further the purposes of the said Mutual Security Act of 1951, as amended:

1. Section 3648 of the Revised Statutes, as amended, 60 Stat. 809 (31 U.S.C. 529).

2. Section 305 of the Federal Property and Administrative Services Act of 1949, approved June 30, 1949, ch. 288, 63 Stat. 396 (41 U.S.C. 255).

3. Section 3709 of the Revised Statutes, as amended (41 U.S.C. 5).

HARRY S. TRUMAN

THE WHITE HOUSE,

November 14, 1952.

[F. R. Doc. 52–12341; Filed, Nov. 14, 1952; 3:54 p.m.]

[p. 10495]

1.3c E.O. 11223, RELATING TO THE PERFORMANCE OF FUNCTIONS AUTHORIZED BY THE FOREIGN ASSISTANCE ACT OF 1961

May 12, 1965, 30 Fed. Reg. 6635-6636

RELATING TO THE PERFORMANCE OF FUNCTIONS AUTHORIZED BY THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

By virtue of the authority vested in me by Section 633 of the Foreign Assistance Act of 1961, as amended, 75 Stat. 454 (22

U.S.C. 2393), it is hereby determined that, to the extent hereinafter indicated, the performance of functions authorized by that Act, as amended, and any predecessor legislation, without regard to the laws specified in the numbered subdivision of Sections 1 and 2 of this order and without regard to consideration as specified in Sections 3 and 4 of this order will further the purposes of the Foreign Assistance Act of 1961, as amended:

SECTION 1. With respect to functions authorized by the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), and any predecessor legislation except those functions exercised by the Department of Defense under authority of Sections 621 and 623 of the Foreign Assistance Act of 1961 (22 U.S.C. 2381 and 2383):

(1) The Act of March 26, 1934, 48 Stat. 500, as amended (15 U.S.C. 616a).

(2) Section 3648 of the Revised Statutes, as amended, 60 Stat. 809 (31 U.S.C. 529).

(3) Section 305 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 396, as amended (41 U.S.C. 255).

(4) Section 3709 of the Revised Statutes, as amended (41 U.S.C. 5.)

(5) Section 3710 of the Revised Statutes (41 U.S.C. 8).

(6) Section 2 of Title III of the Act of March 3, 1933, 47 Stat. 1520(41 U.S.C. 10a).

(7) Section 3735 of the Revised Statutes (41 U.S.C. 13).

(8) Section 304(c) of the Federal Property and Administrative Services Act of 1949, as added by the Act of October 31, 1951, 65 Stat. 700 (41 U.S.C. 254(c)), but only with respect to contracts entered into with foreign governments or agencies thereof for the rendering of services to the United States or an agency thereof within the continental limits of the United States.

(9) Section 901(a) of the Merchant Marine Act, 1936, 49 Stat. 2015, as amended (46 U.S.C. 1241 (a)).

SEC. 2. With respect to purchases authorized to be made outside the limits of the United States or the District of Columbia under the Foreign Assistance Act of 1961, as amended, and any predecessor legislation:

(1) Section 2276(a) of Title 10 of the United States Code.

(2) Section 2313(b) of Title 10 of the United States Code.

(3) Section 304(c) of the Federal Property and Administrative Services Act of 1949, as added by the Act of October 31, 1951, 65 Stat. 700 (41 U.S.C 254(c)).

(4) Section 1301 of the Second War Powers Act, 1942, 56 Stat. 185 (50 U.S.C. App. 643), as extended by the provisions of the Act of June 30, 1953, 67 Stat. 120.

[p. 6635]

(5) Section 3(b) of the Act of August 28, 1958, 72 Stat. 972 (50 U.S.C. 1433(b)), but only with respect to contracts in which the inclusion of the clause required by Section 3(b), or the compliance with that clause, if included in a contract, is deemed by the executive or military department concerned to be impracticable.

SEC. 3. With respect to cost-type contracts heretofore or hereafter made with non-profit institutions under which no fee is charged or paid, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

SEC. 4. With respect to contracts heretofore or hereafter made, other than those described in Section 3 of this order, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State determines in each case that such action is necessary to protect the foreign policy interests of the United States.

SEC. 5. Executive Order No. 10784 of October 1, 1958, and Executive Order No. 10845 of October 12, 1959, are hereby superseded.

LYNDON B. JOHNSON

THE WHITE HOUSE,
May 12, 1965

[F.R. Doc. 65–5158; Filed, May 12, 1965; 2:56 p.m.]

[p. 6636]

1.4 CONTRACTS: ACQUISITION, CONSTRUCTION OR FURNISHING OF TEST FACILITIES AND EQUIPMENT, AS AMENDED
10 U.S.C. §2353 (1956)

[Referred to in 42 U.S.C. §1857b-1(a)(2)(D)]

10 § 2353

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor. Aug. 10, 1956, c. 1041, 70A Stat. 134.

1.4a ACT OF JULY 16, 1952

P.L. 82-557, 66 Stat. 725

AN ACT

To facilitate the performance of research and development work by and on

behalf of the Departments of the Army, the Navy, and the Air Force, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the Secretaries of the military departments is hereby authorized to establish such advisory committees or panels as may be necessary for the conduct of the research and development activities of his department, and to employ such part-time advisory personnel as they may deem necessary in carrying out such activities. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed $50 for each day of service, as determined by the appointing authority.

SEC. 2. No provision of law prohibiting employment of or payment of compensation or expenses to any person not a citizen of the United States shall apply to any expert, scientific, technical, or professional person whose appointment or employment in connection with the research and development activities of the military departments is determined by the Secretary concerned to be necessary.

SEC. 3. Contracts of the military departments for services and use of facilities for research or development may be made for a term not to exceed five years, and may be extended for an additional period not to exceed five years, subject to the availability of appropriations therefor.

SEC. 4. Any contract of the military departments for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor of such research, developmental, or test facilities and equipment as may be determined by the Secretary concerned to be necessary for the performance thereof. Such research, developmental, or test facilities and equipment, including specialized housing therefor, may be acquired or constructed at Government expense, and may be furnished to the contractor by lease, loan, or sale at fair value, and with or without reimbursement to the Government for the use thereof: *Provided,* That nothing contained in this subsection shall be deemed to authorize new construction or improvements having general utility: *Provided further,* That nothing contained herein shall be deemed to authorize the installation or construction of facilities on property not owned by the Government which would

not be readily removable or separable without unreasonable expense or unreasonable loss of value, unless adequate provision is made in the contract for (1) reimbursement to the Government of the fair value of such facilities upon the completion or termination of the contract, or within a reasonable time thereafter, or (2) an

[p. 725]

option in the Government to acquire the underlying land, or (3) such other provisions as will in the opinion of the Secretary concerned be adequate to protect the Government's interest in such facilities: *And provided further*, That all moneys arising from sales or reimbursement under this section shall be covered into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to contractor-acquired property. The Secretary of each of the military departments shall transmit to the Congress reports covering contracts for research or development entered into during each six months following the enactment of this Act. Each such report shall contain (1) a list of each contract for research or development entered into during such period the total cost of which to the Government will exceed $50,000, and (2) specific information with respect to each such contract, except that specific information the disclosure of which he deems incompatible with the security of the United States may be excluded from such reports.

SEC. 5. With the approval of the Secretary concerned, any contract of the military departments for research or development, or both, may provide that the Government will indemnify the contractor against either or both of the following, to the extent that they arise out of the direct performance of said contract and are not compensated by insurance or otherwise: (1) Liability on account of claims (including reasonable expenses of litigation or settlement of such claims) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, arising as a result of a risk defined in the contract to be unusually hazardous: [*Provided*, that any contract so providing shall also contain appropriate provisions for notice to the Government of suits or actions filed or claims made, against the contractor, with respect to any alleged liability for such death, bodily injury, or loss of or damage to property, and for control of or assistance in the defense of any such suit, action, or claims, by the Government, at its election;] and (2) loss of or damage to property of the contractor arising as a result of a risk defined in the contract to be unusually hazardous: *And provided further*, That

no payment shall be made by the Government under authority of this section unless the amount thereof shall first have been certified to be just and reasonable by the Secretary concerned or by an official of the department designated for such purpose by the Secretary. Any such payment may be made, with the approval of the Secretary concerned, out of any funds obligated for the performance of such contract or out of funds available for research and development work and not otherwise obligated; or out of any funds appropriated by the Congress for the making of such payments.

SEC. 6. Each of the Secretaries of the military departments is authorized to prescribe, with the approval of the Secretary of Defense and of the Comptroller General of the United States, regulations for his department stating the extent to which vouchers for funds expended under any contract for research or development, or both, shall be subject to itemization, substantiation, or certification prior to payment, without regard to the limitations of other laws relating to the expenditure of public funds and accounting therefor.

SEC. 7. Each of the Secretaries of the military departments is authorized to delegate any authority provided by this Act to the Under Secretary or any Assistant Secretary of his department and, except the authority under the second proviso in section 4 hereof, the said Secretaries may delegate any authority provided by this Act to the chiefs of the technical services, bureaus, or offices and to one assistant

[p. 726]

to each such chief. The power to negotiate, execute, and administer contracts for research or development, or both, may be further delegated, subject to the provisions of any other applicable law.

Approved July 16, 1952.

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526-703 O - 73 - 37

1.4a(1) HOUSE COMMITTEE ON ARMED SERVICES

H.R. REP. No. 548, 82d Cong., 1st Sess. (1951)

FACILITATING THE PERFORMANCE OF RESEARCH AND DEVELOPMENT WORK BY AND ON BEHALF OF THE DEPARTMENTS OF THE ARMY, NAVY, AND AIR FORCE

JUNE 12, 1951.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HEBERT from the Committee on Armed Services, submitted the following

REPORT

[To accompany H.R. 1180]

The Committee on Armed Services, to whom was referred the bill (H.R. 1180) to facilitate the performance of research and development work by and on behalf of the Departments of the Army, the Navy, and the Air Force, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to provide the armed services with powers which are considered to be necessary to facilitate the carrying on of their research and development programs.

The recent war may truly be called the scientists' war. Of course, the most spectacular evidence of this is the development of the atomic bomb. Other known illustrations are the proximity fuze, the myriad applications of radar, recoilless weapons, and the use of infra-red in front-line combat. On the side of the enemy there were such things as the V–1 guided missile, the V–2 rocket, the sonic torpedo, and the snorkel submarine.

The significance of this for our national security in the future has been well stated by Dr. Vannevar Bush, in his report to the President entitled, "Science—The Endless Frontier":

> **We cannot again rely on our allies to hold off the enemy while we struggle to catch up. There must be more—and more adequate—military research in peacetime.**

It must be remembered that on mobilization day the enemy will

have a far greater number of men under arms than the Allied Nations. The logical answer on our part appears to be an equivalent countersuperiority in arms and equipment as a result of our "more—and more

[p. 1]

adequate—military research in peacetime." The truth of this statement has been demonstrated by the early experience of UN troops against the mass attacks of Communists in Korea.

As a result of that experience, funds have been made available for the acceleration of the research and development program.

Money alone, however, will not enable the military departments to meet their research and development obligations. They must have clear authority necessary to arrange and organize their research and development work so as to secure the maximum results for the funds expended. It is for that reason that the Armed Forces have joined in recommending the passage of H.R. 1180.

This proposal does not require the increase of current appropriations for research and development. The proposed legislation will result in no increased cost to the Government, except to the extent that unforeseen hazards may create liabilities under the indemnity provisions contained in section 5 of the proposed bill. It is impossible to foresee the extent of such claims under these provisions, or even whether justifiable claims will actually be made.

Experience has shown conclusively how research and development, its personnel, and its institutions, must have each of the elements of authority incorporated in this bill. This can be demonstrated by analyzing the bill section by section.

SECTIONAL ANALYSIS

Section 1 provides for the establishment of research and development advisory committees or panels and the employment of such part-time advisory personnel in each of the military departments as they may deem necessary in carrying out their research and development activities. The wartime experience of the armed services has demonstrated that such committees or panels and part-time consultants are of immeasurable aid to the research and development programs of the armed services, because they focus the greatest scientific minds of the country on the planning and execution of the research and development projects of the armed services. The members of these committees or panels and such advisory personnel should be permitted to serve either with or without compensation, and should be exempted from the laws

(secs. 281, 283, and 284 of title 18, U.S. Code) which contain certain statutory prohibitions and penalties which would be applicable to all Federal employees, for example, in regard to the participation in Government contracts or claims against the Government. The most competent persons and efficient firms are those we hope will accept appointments and contracts with the Government, and may be in a position to lay valid claims against the Government. These persons and firms should not be embarrassed by their inter-relationship while in Government service. This section would overcome the reluctance of such persons and firms and put them at ease in accepting such work. Past experience has shown that it is in the best interests of the United States to utilize the experience of the country's outstanding industrialists, scientists, and educators who might be willing to accept pay, or fearful of liabilities under the cited laws.

Section 2 authorizes the employment of scientific and technical persons, whether or not they are citizens of the United States. It is

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common knowledge that many of the leading experts in these fields are noncitizens and this authority will permit the employment of such persons under the provisions of Public Law 600, Seventy-ninth Congress.

Section 3 provides for long-term contracts. Research and development programs must be planned far in advance in order to achieve and maintain superior weapons and equipment systems. The individual projects which contribute to the over-all programs are unpredictable as to results and as to the length of time required for completion. Continuing funds as authorized in Public Law 604, Eighty-first Congress, together with a 5-year contract term plus provision for additional 5-year contract renewals, will provide the necessary continuity. Under the proposed system the Bureau of the Budget and the Congress would not lose control over appropriated funds. In the case of each activity they would be presented annually, with a single figure, representing the "bank balance" of that activity. A large percentage of research and development activities are conducted by contract with civilian institutions. The inability of the military services to conform to established business practices in making long-term contracts seriously impairs this relationship. A prospective contractor hesitates to commit a highly trained staff, recruited with difficulty, for fear of termination of the work when the contract is on a short-term basis. Accelerated progress in critical fields may thus be retarded

until a subsequent appropriation to cover an amendment or a new contract can be justified. Authority to place long-term contracts is considered essential to meet the foregoing requirements.

Section 4 provides for the furnishing of necessary research, development or test facilities to contractors, subject to adequate protection of the Government's interests therein. It is the committee's understanding that, under the provisions of this section, the military departments may utilize research and development funds for the furnishing or construction of equipment or facilities for the use of contractors where appropriate. Wartime experience indicates that situations arise in which contractors require special facilities for the performance of their contracts. Since in many cases these facilities would be of no use to them apart from the performance of such contracts, they are unable to provide the facilities at their own expense. On the other hand, to permit contract prices to include sufficient amounts to cover the cost of such facilities would obviously be unfair to the Government in that the Government would, in effect, be not only buying the facilities, but would then leave them in the possession of the contractor. The solution proposed herein is to authorize the Government to provide such facilities, at the same time protecting its interest therein.

Section 5 provides authority for the military departments to agree to indemnify contractors against liability and loss resulting from injury to persons or damage to property arising out of the direct performance of a research and development contract, to the extent that such losses are not compensated by insurance or otherwise. In many cases, contractors are reluctant to undertake a research or development contract involving extremely hazardous new developments without adequate protection in the event of liability resulting from claims made as a result of damage from those experiments. No provisions can be made

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for such protection by including a reserve in the contract price, and the cost of insurance, if at all obtainable, would be prohibitive. The solution is for the Government to agree to indemnify such contracts subject to the safeguards provided in this section.

Section 6 provides authority for the Secretaries of the military departments, with the approval of the Secretary of Defense and the Comptroller General to promulgate regulations stating the extent to which vouchers for funds expended under any research and development contract shall require itemization or substantiation prior to payment. Universities and nonprofit institutions, in

which much research is conducted, as well as some commercial organizations, are not equipped to handle the detailed vouchering procedures and auditing technicalities required. Difficulty is experienced in negotiating contracts with these institutions for that proved highly satisfactory. The requirement of approval by the Office of Scientific Research and Development during the war and proved highly satisfactory. The requirement of approval by the Secretary of Defense and the Comptroller General is an important safeguard on the extent to which this authority will be used.

Section 7 provides authority for the prompt publication of scientific and technical information developed by the departments, which will be extremely useful in disseminating such information. Frequently it will be advantageous for the departments to avail themselves of specialized means of distribution of such information, such as the use of the services and mailing lists of appropriate learned societies. The current situation of inflation, increased costs, and the consequent shrinkage in media of publication of scientific work, plus increase scientific activity, has resulted in considerable difficulty in the publication of the findings of scientific work. Scientific progress is directly related to the prompt dissemination of technical data to others who are engaged in similar work. It is to the interest of the military service to assist in such dissemination of information, subject to security controls. This section excludes the publication of such material from the provisions of law which generally require that all printing for Government agencies shall be done at the Government Printing Office.

Section 8 authorizes the Secretaries of the military departments to delegate any authority provided by this act to the Under or Assistant Secretaries of the Departments, the Chiefs of the Technical Service bureaus or offices, and to one assistant of each such chief. Such delegation of authority is normal and is considered essential in order to achieve the necessary facility and flexibility of operation.

There can be no question that the future security of our Nation depends largely upon our military research and development program. The purpose of the proposed bill is to provide the armed services with adequate means for properly discharging their research and development functions.

As previously noted, it is impossible to predict unforeseen hazards which may create liabilities under the indemnity provisions contained in section 5 of the proposed bill. It is the intention of the committee that the departments continue the current policy of

having contractors insure employees against hazards in doing research contract work where the premiums on such insurance are not prohibitively costly. It is recognized that some of the undertakings in the research and development contracts are so hazardous that they cannot be insured

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in any amount. If such contracts are to be undertaken, and the committee agrees that they must, there is no other solution than that of having the Government agree to indemnify the contractor if liability should be sustained by him. Except for this possibility, the proposed legislation will result in no increased cost to the Government.

The proposed legislation is a part of the Department of Defense legislative program for 1951 and it has been approved by the Bureau of the Budget. The Department of Defense recommends that it be enacted by the Congress as is evidenced by the report of the Secretary of Defense which is hereto attached and made a part of this report:

ASSISTANT SECRETARY OF DEFENSE,
Washington, D.C., January 5, 1951.

Hon. SAM RAYBURN,

Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation "to facilitate the performance of research and development work by and on behalf of the Army, the Navy, and the Air Force, and for other purposes," together with a sectional analysis thereof.

This proposed legislation is a part of the Department of Defense Legislative Program for 1951 and it has been approved by the Bureau of the Budget. The Department of Defense recommends that it be enacted by the Congress.

Purpose of the legislation: The purpose of this legislation is to provide the military departments with administrative authority required to carry out research and development programs. General authority for research and development programs of the Departments of the Army and Air Force is provided by the Army and Air Force Authorization Act of 1949, while the Department of the Navy carries out its research and development program under the authority of the act of August 1, 1946 (60 Stat. 779). The National Security Act of 1947, as amended, provides for the authority of the Secretary of Defense and the Research and Development Board with respect to all research and development programs of the Department of Defense. This legislation is not designed to affect such general authorities and relationships but merely to provide the military departments with administrative powers which are essential, in order to effectively implement the general authority to conduct such programs.

These essential powers are:

(1) the appointment of research advisory committees;

(2) The employment of alien scientists and technicians;

(3) The periodic renewal of research contracts;

(4) The furnishing of Government facilities;

(5) The indemnification against damage loss, where the contractor is unable to procure insurance coverage;

(6) A simplified voucher procedure, the requirements of which can be met by colleges, universities, institutes, and other contractors; and

(7) The publication and dissemination of scientific and technical information.

Legislative references: Legislation similar to this proposal was introduced in the Eightieth Congress (S. 1560). S. 1560 was passed by the Senate (S. Rept. No. 1397), but was not reported out of the House Committee before adjournment.

The Army and Air Force Authorization Act of 1949 (Public Law 604, 81st Cong.) which was approved on July 10, 1950, authorized the Departments of the Army and Air Force to conduct, engage, and participate in research and development programs and to procure or contract for facilities, equipment, services, and supplies to effectuate such programs. That act also provided for the continued availability of appropriations to the Departments of the Army, Navy, and Air Force for research and development.

Legislation identical with this proposal except for technical changes and the omission of authority for the continued availability of appropriations for research and development in the enclosed draft was included in the Department of Defense legislative program for consideration by the Eighty-first Congress, second session, approved by the Bureau of the Budget, and introduced in the Congress (S. 3521 and H.R. 8352). No further action was taken by the Eighty-first Congress with respect to S. 3521 and H.R. 8352.

Cost and budget data: Enactment of the proposed legislation should result in no additional expenditure of public funds, except to the extent that unforeseen

[p. 5]

hazards may create liabilities under the indemnity provisions of the proposed legislation. It is impossible to foresee the extent of claims under those provisions.

Department of Defense action agency: The Department of the Army has been designated as the representative of the Department of Defense for this legislation.

Sincerely yours,

MARX LEVA.

Existing comparable law is printed below on the left with the bill (H.R. 1180) on the right:

EXISTING COMPARABLE LAW

ARMY AND AIR FORCE AUTHORIZATION ACT OF 1949—RESEARCH AND DEVELOPMENT AUTHORIZATION

(Army Authority)

SEC. 104. The Secretary of the Army is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

(Air Force Authority)

SEC. 205. The Secretary of the Air Force is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Air Force of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

(Army, Navy, and Air Force Appropriation Authority)

SEC. 303. (a) There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act.

(b) Moneys appropriated to the Departments of the Army, Navy, or Air Force for procurement of technical military equipment and supplies, the construction of public works, and for research and development, including moneys appropriated to the Department of the Navy for the procurement, construction, and research and development of guided missiles, which are hereby authorized for the Department of the Navy, shall remain available until expended unless otherwise provided in the appropriation act concerned.

EXISTING COMPARABLE LAW

ACT OF AUGUST 1, 1946 (60 STAT. 779)

(Office of Naval Research)

* * * That there is hereby created and established in the Office of the Secretary of the Navy an Office of Naval Research, which shall be charged with such duties relating to (1) the encouragement, promotion, planning, initiation, and coordination, of naval research; (2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the respective bureaus and other agencies and offices of the Navy Department; and (3) the supervision, administration, and control of activities within or on behalf of the Department of the Navy relating to patents, inventions, trade-marks, copyrights, royalty payments, and matters connected therewith, as may be prescribed by the Secretary of the Navy. All of the duties of this Office shall be performed under the authority of the Secretary of the Navy and its orders shall be considered as emanating from him and shall have full force and effect as such.

SEC. 2. At the head of the Office of Naval Research there shall be a Chief of Naval Research, appointed by the President, by and with the advice and consent of the Senate, for a term of not to exceed three years, from among officers not below the grade of commander on the active list of the Navy. The Chief of Naval Research shall have the same rank and shall be entitled to the same pay, allowances, and privileges of retirement as are now or may hereafter be prescribed by or in pursuance of major chiefs of bureaus in the Navy Department.

SEC. 3. An officer on the active list of the Navy may be detailed as Assistant Chief of Naval Research, and such officer shall receive the highest pay of his grade and in case of the death, resignation, absence, or sick-

ness of the Chief of Naval Research, shall, until otherwise directed by the President as provided in Revised Statutes, section 179 (U. S. C., title 5, sec. 6), perform the duties of such chief until his successor is appointed or such absence or sickness shall cease.

SEC. 4. The Secretary of the Navy is hereby authorized to establish a Naval Research Advisory Committee, which shall consist of not exceeding fifteen persons to be appointed by the Secretary from those persons in civilian life who are preeminent in the fields of science, research, and development work. One member of such committee will be from the field of medicine. The members of such committee shall serve for such term or terms as the Secretary may specify, and shall meet at such times as may be specified by the Secretary to consult with and advise the Chief of Naval Operations and the Chief of the Office of Naval Research. Each member of such committee shall be entitled to compensation in the amount of $50 for each day or part of a day he shall be in attendance at any regularly called meeting of the committee, together with reimbursement for all travel expenses incident to such attendance: Provided, that nothing contained in sections 41, 109, and 113 of the Criminal Code (U.S.C., title 18, secs. 93, 198, and 203); in Revised Statutes, section 190 (U.S.C., title 5, sec. 99); in section 19 (e) of the Contract Settlement Act of 1944 (Public Law 395, Seventy-eighth Congress); or in any other provision of Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim proceeding, or matter involving the United States, shall apply to such persons solely by reason of their appointment to and membership on such committee.

SEC. 5. (a) There is hereby authorized to be appropriated such amounts as may be necessary for the Office of Naval Research to carry out its functions as provided for herein, including such sums as may be required for administrative expenses, and the conduct of research and development work in Government facilities and under contracts with private individuals, corporations, and educational or scientific institutions. Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Chief of the Office of Naval Research to assist him in coordinating the Navy research program and the carrying out of such other duties as outlined in section 1.

(b) Any funds appropriated to enable the Office of Naval Research to carry out its functions as provided for herein shall, if obligated during the fiscal year for which appropriated, remain available for expenditure for four years following the expiration of the fiscal year for which appropriated. After such a four-year period, the unexpended balances of appropriations shall be carried to the surplus fund and covered into the Treasury.

SEC. 6. Within the limits of available appropriations, the Secretary of the Navy, and by direction of the Secretary, of Chief of the Office of Naval Research and the chiefs of all bureaus of the Navy Department may enter into contracts, or amendments or modifications of contracts, for services and materials necessary for the making and securing of reports, tests, models, apparatus, and for the conducting of research, without performance or other bonds, and without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5), section 3718 of the Revised Statutes (U.S.C., title 34, sec. 561), section 3719 of the Revised Statutes (U.S.C., title 34, sec. 562), section 3720 of the Revised Statutes (U. S. C., title 34, sec. 563) section 3722 of the Revised

Statutes (U. S. C., title 34, sec. 572), and may make advance, progress, and other payments with respect to such contracts without regard to the provisions of section 3648 of the Revised Statutes (U.S.C., title 31, sec. 529): Provided, That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting.

SEC. 7. The Secretary of the Navy is authorized to transfer to the Office of Naval Research, as in his judgment may be necessary and appropriate, such research and development functions as are now assigned to the various bureaus and other agencies and offices of the Navy Department, together with any or all personnel, buildings, facilities, and other property used in the administration thereof, including without limitations the Special Devices Division and the Naval Research Laboratory.

NATIONAL SECURITY ACT OF 1947, AS AMENDED BY THE NATIONAL SECURITY ACT AMENDMENTS OF 1949.

(Research and Development Board)

"SEC. 214. (a) There is hereby established in the Department of Defense a Research and Development Board (hereinafter in this section referred to as the 'Board'). The Board shall be composed of a Chairman, who shall be the head thereof and who shall, subject to the authority of the Secretary of Defense and in respect to such matters authorized by him, have the power of decision on matters falling within the jurisdiction of the Board, and two representatives from each of the Departments of the Army, Navy, and Air Force, to be designated by the Secretaries of their respective Departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $14,000 a year. The purpose of the Board shall be to advise the Secretary of Defense as to the status of scientific research relative to the national security, and to assist him in assuring adequate provision for research and development on scientific problems relating to the national security.

"(b) Subject to the authority and direction of the Secretary of Defense, the Board shall perform the following duties and such other duties as the Secretary of Defense may prescribe:

"(1) preparation of a complete and integrated program of research and development for military purposes;

"(2) advising with regard to trends in scientific research relating to national security and the measures necessary to assure continued and increasing progress:

"(3) coordination of research and development among the military departments, and allocation among them of responsibilities for specific programs;

"(4) formulation of policy for the Department of Defense in connection with research and development matters involving agencies outside the Department of Defense; and

"(5) consideration of the interaction of research and development and strategy, and advising the Joint Chiefs of Staff in connection therewith.

"(c) When the Chairman of the Board first appointed has taken office, the Joint Research and Development Board shall cease to exist and all its records and personnel shall be transferred to the Research and Development Board.

"(d) The Secretary of Defense shall provide the Board with such personnel and facilities as the Secretary may determine to be required by the Board for the performance of its functions."

THE BILL (H. R. 1180)

A BILL to facilitate the performance of research and development work by and on behalf of the Departments of the Army, the Navy, and the Air Force, and for other purposes.

That each of the Secretaries of the military departments is hereby authorized to establish such advisory committees or panels as may be necessary for the conduct of the research and development activities of his department, and to employ such part-time advisory personnel as they may deem necessary in carrying out such activities. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such services. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed $50 for each day of service, as determined by the appointing authorities.

Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department hereunder, shall not be considered as service bringing such individual within the provisions of section 281, 283, or 284 of title 18, United States Code, unless the act of such individual, which by such section is made unlawful when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department which such person is advising or in which such department is directly interested. The provisions of the Act of July 12, 1870 (Revised Statutes, 3679), as amended shall not apply to the acceptance of voluntary service of any member of any committee or panel authorized by this section.

SEC. 2. No provision of law prohibiting employment of or payment of compensation or expenses to any person not a citizen of the United States shall

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apply to any expert, scientific, technical, or professional person whose appointment or employment in connection with the research and development activities of the military departments is determined by the Secretary concerned to be necessary.

SEC. 3. Contracts of the military departments for services and use of facilities for research or development may be made for a term not to exceed five years, and may be extended for an additional period not to exceed five years, subject to the availability of appropriations therefor.

SEC 4. Any contract of the military departments for research or development, or both, may provide for the acquisition or construction, by, or furnishing to, the contractor of such research, developmental, or test facilities and equipment as may be determined by the Secretary concerned to be necessary for the performance thereof. Such research, developmental, or test facilities and equipment, including specialized housing therefor, may be acquired or constructed at Government expense, and may be furnished to the contractor by lease, loan, or sale at fair value, and with or without reimbursement to the Government for the use thereof: ***Provided,*** That nothing contained in this subsection shall be deemed to authorize new construction or improvements having general utility: ***Provided further,*** That nothing contained herein shall be deemed to authorize the installation or construction of facilities on property not owned by the Government which would not be readily removable or separable without unreasonable expense or unreasonable loss of value, unless adequate provision is made in the contract for (1) reimbursement to

the Government of the fair value of such facilities upon the completion or termination of the contract, or within a reasonable time thereafter, or (2) an option in the Government to acquire the underlying land, or (3) such other provisions as will in the opinion of the Secretary concerned be adequate to protect the Government's interest in such facilities: *And provided further*, That all moneys arising from sales or reimbursement under this section shall be covered into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to contractor-acquired property.

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SEC. 5. With the approval of the Secretary concerned, any contract of the military departments for research or development, or both, may provide that the Government will indemnify the contractor against either or both of the following, to the extent that they arise out of the direct performance of said contract and are not compensated by insurance or otherwise: (1) Liability on account of claims (including reasonable expenses of litigation or settlement of such claims) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, arising as a result of a risk defined in the contract to be unusually hazardous: *Provided*, That any contract so providing shall also contain appropriate provisions for notice to the Government of suits or actions filed or claims made, against the contractor, with respect to any alleged liability for such death, bodily injury, or loss of or damage to property, and for control of or assistance in the defense of any such suit, action, or claims, by the Government, at its election; and (2) loss of or damage to property of the contractor arising as a result of a risk defined in the contract to be unusually hazardous: ***And provided further***, That no payment shall be made by the Government under authority of this section unless the amount thereof shall first have been certified to be just and reasonable by the Secretary concerned or by an official of the department designated for such purpose by the Secretary. Any such payment may be made, with the approval of the Secretary concerned, out of any funds obligated for the performance of such contract or out of funds available for research and development work and not otherwise obligated; or out of any funds appropriated by the Congress for the making of such payments.

SEC. 6. Each of the Secretaries of the military department is authorized to prescribe, with the approval of the Secretary of Defense and of the Comptroller General of the United States, regulations for his department stating the extent to which vouchers for funds expended under any contract for research or development, or both, shall be subject to itemization, substantiation, or certification prior to payment, without regard to the limitations of other laws relating to the expenditure of public funds and accounting therefor.

SEC. 7. Each of the Secretaries of the military departments is authorized to arrange for the publication of scientific and technical information resulting from

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the research and development activities of his department, so as to further the full dissemination of information of scientific value consistent with the national interest without regard to the provisions of section 87 of the Act of January 12, 1895 (28 Stat. 662), as amended, or of section 2 of the act of June 30, 1906 (34 Stat. 762), as amended.

SEC. 8. Each of the Secretaries of the military departments is authorized to delegate any authority provided by

this Act to the Under Secretary or any Assistant Secretary of his department and, except the authority under the second proviso in section 4 hereof, the said Secretaries may delegate any authority provided by this Act to the chiefs of the technical services, bureaus, or offices and to one assistant to each such chief. The power to negotiate, execute, and administer contracts for research or development, or both, may be further delegated, subject to the provisions of any other applicable law.

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1.4a(2) SENATE COMMITTEE ON ARMED SERVICES

S. REP. No. 936, 82d Cong., 1st Sess. (1951)

FACILITATING THE PERFORMANCE OF RESEARCH AND DEVELOPMENT WORK BY AND ON BEHALF OF THE DEPARTMENTS OF THE ARMY, THE NAVY, AND THE AIR FORCE

OCTOBER 11 (legislative day, OCTOBER 1) 1951.—Ordered to be printed

Mr. STENNIS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany H. R. 1180]

The Committee on Armed Services, to whom was referred the bill H. R. 1180, to facilitate the performance of research and development work by and on behalf of the Departments of the Army, the Navy, and the Air Force, and for other purposes, having considered the same, report favorably thereon, without amendments, and recommend that the bill do pass.

PURPOSE OF THE BILL

The proposed legislation would provide the three military departments with certain administrative authority required to carry out their research and development programs.

EXPLANATION OF THE BILL

Background of the pending bill

The bill is substantially the same as S. 1560, Eightieth Congress, which was passed by the Senate on June 1, 1948, but concerning which no action was taken by the House of Representatives. The pending bill introduces no change in policy or procedure not contemplated in S. 1560, Eightieth Congress.

General authority for research and development

The Army and Air Force Organization Act of 1949 contains

general authority for research and development programs to be carried out by the Departments of the Army and Air Force. The Department of the Navy carries out its research and development

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program under the authority of the act of August 1, 1946 (60 Stat. 779). The National Security Act of 1947, as amended by the National Security Act Amendments of 1949, makes provision for the authority of the Secretary of Defense and the Research and Development Board with respect to research and development programs within the Department of Defense.

H. R. 1180 does not disturb these general authorities and relationships but is intended to provide the three military departments with certain administrative powers which are essential for them to implement the general authority which they now have to conduct such programs.

Major provisions of the bill

The more important administrative powers which the bill provides are listed below:

(1) The appointment of research advisory committees;

(2) The employment of alien scientists and technicians;

(3) The periodic renewal of research contracts;

(4) The furnishing of Government facilities;

(5) The indemnification against damage loss, where the contractor is unable to procure insurance coverage;

(6) A simplified voucher procedure, the requirements of which can be met by colleges, universities, institutes, and other contractors; and

(7) The publication and dissemination of scientific and technical information.

A more detailed discussion of each of the sections of the bill is contained in the section-by-section analysis which follows.

SECTION-BY-SECTION ANALYSIS

Section 1. Establishment of research and development advisory committees

This section provides for the establishment of research and advisory committees and panels and for the employment of such part-time advisory personnel as the Secretaries deem necessary in carrying out research and development activities.

Wartime experience demonstrated that such committees or

panels and part-time consultants were of invaluable assistance in the conduct of research and development programs. Such groups make it possible for the country to avail itself of the best scientific minds to deal with both the planning and the execution of projects of the type for which professional personnel of the armed services are not particularly equipped.

The bill provides that members of such committees and panels and advisory personnel may serve either with or without compensation and shall be exempt from the conflict of interest sections of title 18 of the United States Code.

The authority to pay compensation at the rate of not to exceed $50 per day of service is comparable to that contained in the 1949 amendments to the National Security Act. It should be pointed out that this language does not constitute a new or separate authority for the employment of consultants. The committee is mindful of the fact

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that substantial numbers of consultants are already employed by the Federal Government based upon authorizations contained in various appropriations acts. One of the beneficial results of the bill S. 913 (Mr. McClellan), which would establish a Joint Budget Committee service and work on the Federal budget, would be a scrutiny of the justifications for selection and employment of this category of personnel.

Section 2. Employment of noncitizens

This section authorizes the employment of scientific and technical persons, whether or not they are citizens of the United States. Many of the experts in these fields are noncitizens and this authority will permit the employment of such persons under the provisions of Public Law 600, Seventy-ninth Congress.

Section 3. Contracts

This section provides for long-term contracts. Research and development programs must be planned far in advance. The individual projects which contribute to the over-all programs are unpredictable both as to results and as to the length of time required for completion. Continuing funds as authorized in the Army and Air Force Authorization Act of 1949, together with a 5-year contract term plus provision for additional 5-year contract renewals, will provide the necessary continuity. Under the proposed system the Bureau of the Budget and the Congress would not lose control over appropriated funds. In the case of each activity Congress

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would be presented annually with a single figure representing the "bank balance" of that activity.

A large percentage of research and development activities are conducted by contract with civilian institutions. The inability of the military services to conform to established business practices in making long-term contracts seriously impairs this relationship. A prospective contractor hesitates to commit a highly trained staff, recruited with difficulty, for fear of termination of the work when the contract is on a short-term basis. Accelerated progress in critical fields may thus be awarded until a subsequent appropriation to cover an amendment and new contract can be justified. Authority to place long-term contracts is considered essential to meet the foregoing requirements.

Section 4. Furnishing of certain essential facilities to contractors

This section provides for the furnishing of necessary research, developmental or test facilities to contractors, subject to adequate protection of the Government's interests therein. Under the provisions of this section, the military departments may utilize research and development funds for the furnishing or construction of equipment or facilities for the use of contractors where appropriate. Wartime experience indicates that situations arise in which contractors require special facilities for the performance of their contracts. Since in many cases these facilities would be of no use to them apart from the performance of such contracts, they are unable to provide the facilities at their own expense. On the other hand, to permit contract prices to include sufficient amounts to cover the cost of such facilities, would obviously be unfair to the Government in that the Government would,

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in effect, be not only buying the facilities, but would then leave them in the possession of the contractor. The solution proposed herein is to authorize the Government to provide such facilities, at the same time protecting its interest therein.

Section 5. Authority to indemnify contractors against liability and loss arising from injury or damage

This section provides authority for the military departments to agree to indemnify contractors against liability and loss resulting from injury to persons or damage to property arising out of the direct performance of a research and development contract, to the extent that such losses are not compensated by insurance or otherwise. In many cases, contractors are reluctant to undertake a

research or development contract involving extremely hazardous new developments without securing adequate protection in the event of liability resulting from claims made as a result of damage from those experiments. No provision can be made for such protection by including a reserve in the contract price, and the cost of insurance, if at all obtainable, would be prohibitive. The solution is for the Government to agree to indemnify such a contractor, subject to the safeguards provided in this section.

Section 6. Simplified vouchering procedures

This section provides authority for the Secretaries of the military departments, with the approval of the Secretary of Defense and the Comptroller General to promulgate regulations stating the extent to which vouchers for funds expended under any research and development contract shall require itemization or substantiation prior to payment. Universities and nonprofit institutions, in which much research is conducted, as well as some commercial organizations, are not equipped to handle the detailed vouchering procedures and auditing technicalities required. Difficulty is experienced in negotiating contracts with these institutions for that reason. Relaxed procedures were applied to contracts let by the Office of Scientific Research and Development during the war and proved highly satisfactory. The requirement of approval by the Secretary of Defense and the Comptroller General is an important safeguard on the extent to which this authority will be used.

Section 7. Authorization for scientific and technical publications

This section 7 provides authority for the prompt publication of scientific and technical information developed by the departments, which will be extremely useful in disseminating such information. It frequently will be advantageous for the departments to avail themselves of specialized means of distribution of such information, such as the use of the services and mailing lists of appropriate learned societies. The current situation of inflation, increased costs, and the consequent shrinkage in media of publication of scientific work, plus increased scientific activity, has resulted in considerable difficulty in the publication of the findings of scientific work. Scientific progress is directly related to the prompt dissemination of technical data to others who are engaged in similar work. It is to the interest of the military service to assist in such dissemination of information, subject to security controls. This section provides the means to that end, and also excludes such material from the provisions of law which

generally require that all printing for Government agencies shall be done at the Government Printing Office.

Section 8. Delegation of authority

This section authorizes the Secretaries of the military departments to delegate any authority provided by this act to the Under or Assistant Secretaries of the Departments, the chiefs of the technical services, bureaus or offices, and to one assistant of each such chief. Such delegation of authority is normal and is considered essential in order to achieve the necessary facility and flexibility of operation.

CONCLUSION

There can be no question that the future security of our Nation depends largely upon our military research and development programs. The purpose of the proposed bill is to provide the armed services with adequate means for properly discharging their research and development responsibilities.

As previously noted, it is impossible to predict unforeseen hazards which may create liabilities under the indemnity provisions contained in section 5 of the proposed bill. It is anticipated that the departments will continue their current policy of having contractors insure employees against hazards in doing research contract work where the premiums on such insurance are not prohibitively costly. It is recognized that some of the undertakings in the research and development contracts are so hazardous that they cannot be insured in any amount. If such contracts are to be undertaken there is no other solution than that of having the Government agree to indemnify the contractor if liability should be sustained by him. Except for this possibility, the proposed legislation will result in no increased cost to the Government.

RECOMMENDATION OF DEPARTMENT OF DEFENSE

The proposed legislation is a part of the Department of Defense legislative program for 1951 and it has been approved by the Bureau of the Budget. The Department of Defense recommends that it be enacted by the Congress as is evidenced by the report of the Secretary of Defense which is hereto attached and made a part of this report.

ASSISTANT SECRETARY OF DEFENSE,
Washington 25, D. C., January 5, 1951.

Hon. RICHARD B. RUSSELL
Chairman, Committee on Armed Services,
United States Senate.

DEAR MR. CHAIRMAN: There is forwarded herewith a draft of legislation to facilitate the performance of research and development work by and on behalf of the Army, the Navy, and the Air Force, and for other purposes, together with a sectional analysis thereof.

This proposed legislation is a part of the Department of Defense legislative program for 1951 and it has been approved by the Bureau of the Budget. The Department of Defense recommends that it be enacted by the Congress.

Purpose of the legislation.—The purpose of this legislation is to provide the military departments with administrative authority required to carry out research and development programs. General authority for research and development programs of the Departments of the Army and Air Force is provided by the Army and Air Force Authorization Act of 1949, while the Department of the

[p. 5]

Navy carries out its research and development program under the authority of the act of August 1, 1946 (60 Stat. 779). The National Security Act of 1947, as amended, provides for the authority of the Secretary of Defense and the Research and Development Board with respect to all research and development programs of the Department of Defense. This legislation is not designed to affect such general authorities and relationships but merely to provide the military departments with administrative powers which are essential in order to effectively implement the general authority to conduct such programs.

These essential powers are:

(1) The appointment of research advisory committees;

(2) The employment of alien scientists and technicians;

(3) The periodic renewal of research contracts;

(4) The furnishing of Government facilities;

(5) The indemnification against damage loss, where the contractor is unable to procure insurance coverage;

(6) A simplified voucher procedure, the requirements of which can be met by colleges, universities, institutes, and other contractors; and

(7) The publication and dissemination of scientific and technical information.

Legislative references.—Legislation similar to this proposal was introduced in the Eightieth Congress (S. 1560). S. 1560 was passed by the Senate (S. Rept. No. 1397), but was not reported out of the House committee before adjournment.

The Army and Air Force Authorization Act of 1949 (Public Law 604, 81st Cong.) which was approved on July 10, 1950, authorized the Departments of the Army and Air Force to conduct, engage, and participate in research and development programs and to procure or contract for facilities, equipment, services, and supplies to effectuate such programs. That act also provided for the continued availability of appropriations to the Departments of the Army, Navy, and Air Force for research and development.

Legislation identical with this proposal except for technical changes and the omission of authority for the continued availability of appropriations for research and development in the enclosed draft, was included in the Department of Defense legislative program for consideration by the Eighty-first Congress, second session, approved by the Bureau of the Budget, and introduced in the Congress (S. 3521 and H. R. 8352). No further action was taken by the Eighty-first Congress with respect to S. 3521 and H. R. 8352.

Cost and budget data.—Enactment of the proposed legislation should result in no additional expenditure of public funds, except to the extent that unforeseen hazards may create liabilities under the indemnity provisions of the proposed legislation. It is impossible to foresee the extent of claims under those provisions.

Department of Defense action agency.—The Department of the Army has been designated as the representative of the Department of Defense for this legislation.

Sincerely yours,

MARX LEVA.

The following statutes set forth existing provisions of law which are related to the authority recommended in the proposed legislation and are included in this report as a matter of convenience:

ARMY AND AIR FORCE AUTHORIZATION ACT OF 1949—RESEARCH AND DEVELOPMENT AUTHORIZATION

(Army authority)

SEC. 104. The Secretary of the Army is hereby authorized to conduct, engage and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

(Air Force Authority)

SEC. 205. The Secretary of the Air Force is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Air Force of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

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(Army, Navy, and Air Force Appropriation Authority)

SEC. 303. (a) There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act.

(b) Moneys appropriated to the Department of the Army, Navy, or Air Force for procurement of technical military equipment and supplies, the construction of public works, and for research and development, including moneys appropriated to the Department of the Navy for the procurement,

construction, and research and development of guided missiles, which are hereby authorized for the Department of the Navy, shall remain available until expended unless otherwise provided in the appropriation Act concerned.

ACT OF AUGUST 1, 1946 (60 STAT. 779)

(Office of Naval Research)

* * * That there is hereby created and established in the Office of the Secretary of the Navy an Office of Naval Research, which shall be charged with such duties relating to (1) the encouragement, promotion, planning, initiation, and coordination, of naval research; (2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the respective bureaus and other agencies and offices of the Navy Department; and (3) the supervision, administration, and control of activities within or on behalf of the Department of the Navy relating to patents, inventions, trademarks, copyrights, royalty payments, and matters connected therewith; as may be prescribed by the Secretary of the Navy. All of the duties of this Office shall be performed under the authority of the Secretary of the Navy and its orders shall be considered as emanating from him and shall have full force and effect as such.

SEC. 2. At the head of the Office of Naval Research there shall be a Chief of Naval Research, appointed by the President, by and with the advice and consent of the Senate, for a term of not to exceed 3 years, from among officers not below the grade of commander on the active list of the Navy. The Chief of Naval Research shall have the same rank and shall be entitled to the same pay, allowances, and privileges of retirement as are now or may hereafter be prescribed by or in pursuance of law for chiefs of bureaus in the Navy Department.

SEC. 3. An officer on the active list of the Navy may be detailed as Assistant Chief of Naval Research, and such officer shall receive the highest pay of his grade and in case of the death, resignation, absence, or sickness of the Chief of Naval Research, shall, until otherwise directed by the President as provided in Revised Statutes, section 179 (U.S.C., title 5, sec. 6), perform the duties of such chief until his successor is appointed or such absence or sickness shall cease.

SEC. 4. The Secretary of the Navy is hereby authorized to establish a Naval Research Advisory Committee, which shall consist of not exceeding fifteen persons to be appointed by the Secretary from those persons in civilian life who are preeminent in the fields of science, research, and development work. One member of such committee will be from the field of medicine. The members of such committee shall serve for such term or terms as the Secretary may specify, and shall meet at such times as may be specified by the Secretary to consult with and advise the Chief of Naval Operations and the Chief of the Office of Naval Research. Each member of such committee shall be entitled to compensation in the amount of $50 for each day or part of a day he shall be in attendance at any regularly called meeting of the committee, together with reimbursement for all travel expenses incident to such attendance: *Provided*, That nothing contained in sections 41, 109, and 113 of the Criminal Code (U.S.C., title 18, secs. 93, 198, and 203); in Revised Statutes, section 190 (U.S.C., title 5, sec. 99); in sections 19(e) of the Contract Settlement Act of 1944 (Public Law 395, Seventy-eighth Congress); or in any other provision of

Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim proceeding, or matter involving the United States, shall apply to such persons solely by reason of their appointment to and membership on such committees.

SEC. 5. (a) There is hereby authorized to be appropriated such amounts as may be necessary for the Office of Naval Research to carry out its functions as provided for herein, including such sums as may be required for administrative

[p. 7]

expenses, and the conduct of research and development work in Government facilities and under contracts with private individuals, corporations, and educational or scientific institutions. Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Chief of the Office of Naval Research to assist him in coordinating the Navy research program and the carrying out of such other duties as outlined in section 1.

(b) Any funds appropriated to enable the Office of Naval Research to carry out its functions as provided for herein shall, if obligated during the fiscal year for which appropriated, remain available for expenditure for 4 years following the expiration of the fiscal year for which appropriated. After such a 4-year period, the unexpended balances of appropriations shall be carried to the surplus fund and covered into the Treasury.

SEC. 6. Within the limits of available appropriations, the Secretary of the Navy, and, by direction of the Secretary, the Chief of the Office of Naval Research and the chiefs of all bureaus of the Navy Department may enter into contracts, or amendments or modifications of contracts, for services and materials necessary for the making and securing of reports, tests, models, apparatus, and for the conducting of research, without performance or other bonds, and without regard to section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5), section 3718 of the Revised Statutes (U.S.C., title 34, sec. 561), section 3719 of the Revised Statutes (U.S.C., title 34, sec 562), section 3720 of the Revised Statutes (U.S.C., title 34, sec. 563), section 3722 of the Revised Statutes (U.S.C., title 34, sec. 572), and may make advance, progress, and other payments with respect to such contracts without regard to the provisions of section 3648 of the Revised Statutes (U.S.C., title 31, sec. 529): *Provided,* That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting.

SEC. 7. The Secretary of the Navy is authorized to transfer to the Office of Naval Research, as in his judgment may be necessary and appropriate, such research and development functions as are now assigned to the various bureaus and other agencies and offices of the Navy Department, together with any or all personnel, buildings, facilities, and other property used in the administration thereof, including without limitation the Special Devices Division and the Naval Research Laboratory.

ACT AMENDMENTS OF 1949

NATIONAL SECURITY ACT OF 1947, AS AMENDED BY THE NATIONAL SECURITY

(Research and Development Board)

"SEC. 214. (a) There is hereby established in the Department of Defense a

Research and Development Board (hereinafter in this section referred to as the 'Board'). The Board shall be composed of a Chairman, who shall be the head thereof and who shall, subject to the authority of the Secretary of Defense and in respect to such matters authorized by him, have the power of decision on matters falling within the jurisdiction of the Board, and two representatives from each of the Departments of the Army, Navy, and Air Force, to be designated by the Secretaries of their respective Departments. The Chairman shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $14,000 a year. The purpose of the Board shall be to advise the Secretary of Defense as to the status of scientific research relative to the national security, and to assist him in assuring adequate provision for research and development on scientific problems relating to the national security.

"(b) Subject to the authority and direction of the Secretary of Defense, the Board shall perform the following duties and such other duties as the Secretary of Defense may prescribe:

"(1) preparation of a complete and integrated program of research and development for military purposes;

"(2) advising with regard to trends in scientific research relating to national security and the measures necessary to assure continued and increasing progress;

"(3) coordination of research and development among the military departments, and allocation among them of responsibilities for specific programs;

"(4) formulation of policy for the Department of Defense in connection with research and development matters involving agencies outside the Department of Defense; and

"(5) consideration of the interaction of research and development and strategy, and advising the Joint Chiefs of Staff in connection therewith.

[p. 8]

"(c) When the Chairman of the Board first appointed has taken office, the Joint Research and Development Board shall cease to exist and all its records and personnel shall be transferred to the Research and Development Board.

"(d) The Secretary of Defense shall provide the Board with such personnel and facilities as the Secretary may determine to be required by the Board for the performance of its functions."

SEC. 303. (a) The Secretary of Defense, the Chairman of the National Security Resources Board, the Director of Central Intelligence, and the National Security Council, acting through its Executive Secretary, are authorized to appoint such advisory committees and to employ, consistent with other provisions of this Act, such part-time advisory personnel as they may deem necessary in carrying out their respective functions and the functions of agencies under their control. Persons holding other offices or positions under the United States for which they receive compensation, while serving as members of such committees, shall receive no additional compensation for such service. Other members of such committees and other part-time advisory personnel so employed may serve without compensation or may receive compensation at a rate not to exceed $50 for each day of service, as determined by the appointing authority.

(b) Service of an individual as a member of any such advisory committee, or in any other part-time capacity for a department or agency hereunder,

shall not be considered as service bringing such individual within the provisions of sections 109 or 113 of the Criminal Code (U.S.C., 1940 edition, title 1944, unless the act of such individual, which by such section is made unlawful 18, secs. 198 and 203) or section 19(e) of the Contract Settlement Act of when performed by an individual referred to in such section, is with respect to any particular matter which directly involves a department or agency which such person is advising or in which such department or agency is directly interested.

[p. 9]

1.4a(3) CONGRESSIONAL RECORD:

1.4a(3)(a) Vol. 97 (1951), Oct. 19: Objected to in Senate, p. 13530

FACILITATION OF RESEARCH AND DEVELOPMENT WORK BY DEPARTMENTS OF ARMY, NAVY, AND AIR FORCE—BILL PASSED OVER

The bill (H. R. 1180) to facilitate the performance of research and development work by and on behalf of the Departments of the Army, the Navy, and the Air Force, and for other purposes, was announced as next in order.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. HENDRICKSON. Mr. President, reserving the right to object, will the distinguished Senator from Mississippi explain the bill?

Mr. STENNIS. Mr. President, the purpose of this bill is largely to clarify certain administrative authority which is required in order to carry on the research and development programs authorized for the military services.

This bill is not intended to provide additional basic authority to the Armed Forces with respect to research and development programs. Actually, the Armed Forces already have very broad authority for the conduct of research and development programs. It will be noted from the existing law quoted on pages 6 and 7 of the committee report that the Army, Navy, and Air Force already are authorized, under existing law, to conduct research and development programs and to procure or contract for the use of the necessary facilities, equipment, services, and supplies to effectuate such programs.

The bill addresses itself, therefore, not to the proposition of expanding existing authority, but simply to the proposition of clarifying it. A similar bill passed the Senate in 1948, but no action was taken on that bill in the House of Representatives.

This bill makes no policy changes in that version of the proposed legislation.

In 1948 the bill was handled on the floor of the Senate by the junior Senator from Oregon [Mr. MORSE]. He is a member of the subcommittee which handled the bill in 1951. The bill is on the calendar with the unanimous recommendation of the Armed Service Committee.

Mr. President, I emphasize that this bill is largely a clarification of existing law. These research projects are now being carried on by the various groups of the armed services; and the purpose of this bill is largely to coordinate the law and clarify it and bring it down to a modern package.

I hope there is no opposition to the passage of the bill. It does not relate to an extreme emergency, but passage of the bill would greatly facilitate carrying forward these programs.

Mr. SCHOEPPEL. Mr. President, I appreciate the explanation which has been given by the distinguished Senator from Mississippi. However, I am compelled to object to the passage of the bill; and, by request, I ask that the bill be passed over.

The PRESIDING OFFICER. Objection is heard, and the bill will be passed over.

[p. 13530]

1.4a(3)(b) Vol. 98 (1952), July 3: Passed Senate, pp. 9053-9054

FACILITATION OF RESEARCH AND DEVELOPMENT WORK BY DEPARTMENTS OF ARMY, NAVY, AND AIR FORCE

The bill (H. R. 1180) to facilitate the performance of research and development work by and on behalf of the departments of the Army, the Navy, and the Air Force, and for other purposes, was announced as next in order.

Mr. MORSE. Mr. President, I should like to make a brief statement on the bill.

The VICE PRESIDENT. Is the Senator reserving the right to object?

Mr. MORSE. I reserve the right to object.

Mr. President, I make this statement in behalf of the Armed Services Committee: The Senator from Kansas [Mr. SCHOEPPEL] has prepared several amendments to House bill 1180 dealing with research and development work. The amendments are restrictive in nature. However, in examining them, we learnt that that there is no reason they should not be accepted by the committee and by the Senate, so that the bill may be passed.

I want to make it clear that we have gone into this matter with the assistance of the professional staff of the Armed Services Committee, and I think the

[p. 9053]

amendments of the Senator from Kansas should be adopted. I hope he will offer them and that there will be no objection to them.

The VICE PRESIDENT. The question is, Is there objection to the consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SCHOEPPEL. Mr. President, I call up amendment A, amendment B, and amendment C which were sent to the desk a few days ago, and which I understand are printed.

The VICE PRESIDENT. Does the Senator wish to haave them considered en bloc?

Mr. SCHOEPPEL. Yes, Mr. President.

The VICE PRESIDENT. The clerk will state the amendments offered by the Senator from Kansas.

Mr. HAYDEN. Mr. President, may I ask the Senator from Kansas if one of those amendments is to strike out section 7?

Mr. SCHOEPPEL. Amendment C does that.

Mr. HAYDEN. That section should be eliminated because it interferes with the jurisdiction of the Joint Committee on Printing.

Mr. SCHOEPPEL. That was the view of the Senator from Kansas.

The VICE PRESIDENT. The clerk will state the amendments offered by the Senator from Kansas.

The amendments were:

On page 2, strike out all in lines 7 to 20, inclusive.

On page 4, line 12, after the period, insert the following: "The Secretary of each of the military departments shall transmit to the Congress reports covering contracts for research or development entered into during each 6 months following the enactment of this act. Each such report shall contain (1) a list of each contract for research or development entered into during such period the total cost of which to the Government will exceed $50,000, and (2) specific information with respect to each such contract, except that specific information the disclosure of which he deems incompatible with the security of the United States may be excluded from such reports."

On page 6, strike out all in lines 4 to 12, inclusive.

On page 6, line 13, strike out the section No. "8" and insert in lieu thereof the section No. "7."

Mr. SCHOEPPEL. Mr. President, with reference to amendment A, under

section 1 of the bill, members of committees and panels and advisory personnel could be exempted from the so-called conflict of interest provisions of title 18, United States Code, relating to Federal officers and employees. The amendment A would strike this provision from the bill.

Amendment B would require that reports be made to Committees on Appropriations and Armed Services of the Senate and of the House of Representatives every 6 months by the Secretary of each of the Military Departments, listing all contracts for research and development in excess of $50,000. Such reports shall contain specific information with respect to any such contract. Provision is made, however, for the exclusion in such reports of specific information pertaining to such contracts which is deemed by the Secretary to be incompatible with the security of the United States.

Amendment C would eliminate from this bill authority to waive certain existing requirements of law with regard to printing in the case of publication of scientific and technical information.

The VICE PRESIDENT. The question is on agreeing en bloc to the amendments offered by the Senator from Kansas.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

[p. 9054]

1.4a(3)(c) Vol. 98 (1952), July 4: Passed House, pp. 9374–9375

RESEARCH AND DEVELOPMENT WORK

Mr. VINSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 1180) to facilitate the performance of research and development work by and on behalf of the Departments of the Army, the Navy, and the Air Force, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, strike out lines 7 to 20, inclusive.

Page 4, line 12, after "property.", insert "The Secretary of each of the military departments shall transmit to the Congress reports covering contracts for research or development entered into during each 6 months following the enactment of this act. Each such report shall contain (1) a list of each contract for research or development entered into during such period the total cost of which to the Government will exceed $50,000, and (2) specific information with respect to each such contract, except that specific information the disclosure of which he deems incompatible with the security of the United States may be excluded from such reports."

Page 6, strike out lines 8 to 16, inclusive.

Page 6, line 17, strike out "8" and insert "7."

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

Mr. ARENDS. Mr. Speaker, reserving the right to object, I do so only for the purpose of asking the chair-

[p. 9374]

man of the Committee on Armed Services to explain to the House these three changes which were made by the other body and agreed to by the conferees.

Mr. VINSON. Mr. Speaker, H. R. 1180 is a bill to facilitate the performance of research and development work by the Army, Navy, and Air Force, passed the House on August 2, 1951. It passed the Senate on July 3, 1952, with three amendments.

The three Senate amendments are restrictive in nature and while the Department would normally not want to agree to those amendments, the time element at present has prompted them to state that the House should agree to the amendments.

Section 1 of the House bill relieved the members of the committees of civilians, which committees were to assist each of the service Secretaries on certain statutory restrictions. For instance, the members of these committees would be permitted to serve with or without compensation and would be exempted from certain statutory prohibitions and penalties which are applicable to all other Federal employees, for example, in regard to the participation in Government contracts or claims against the Government. The net result of the Senate amendment would be that persons who comprise these advisory panels to the Secretaries will probably have to be picked from sources which are not in a contractual relationship with the Government.

The second amendment requires each of the Secretaries to report on research and development contracts involving more than $50,000 each 6 months, unless publication of the information would violate security considerations.

The third amendment deletes section 7 of the bill which authorized the Secretaries of the military departments to arrange for the publication of scientific and technical information resulting from the research and development activities of his Department.

The author of the Senate amendment, Senator SCHOEPPEL, is of the opinion that this printing can be taken care of in a different fashion.

Mr. ARENDS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Georgia [Mr. VINSON]?

There was no objection.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

[p. 9375]

1.4b AN ACT TO REVISE, CODIFY AND ENACT INTO LAW TITLE X OF THE UNITED STATES CODE

August 10, 1956, §2353, 70A Stat. 149.

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2353 (a)	5:235c (1st sentence; and 2d sentence, less 2d and last provisos) 5:475j (1st sentence; and 2d sentence, less 2d and last provisos) 5:628e (1st sentence; and 2d sentence, less 2d and last provisos)	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353 (b)	5:235e (2d proviso of 2d sentence) 5:475j (2d proviso of 2d sentence) 5:628e (2d proviso of 2d sentence)	
2353 (c)	5:235e (last proviso of 2d sentence) 5:475j (last proviso of 2d sentence) 5:628e (last proviso of 2d sentence)	

In subsection (a), the words "furnished to" and "for the use thereof" are omitted as surplusage.

In subsections (a) and (b), the words "United States" are substituted for the word "Government".

In subsection (b), the introductory clause is substituted for 5:25e (words of 2d proviso before clause (1)), 475j, and 628e. The words "that . . . considers" are substituted for the words "as will in the opinion". The words "an alternative" are substituted for the words "such other".

In subsection (c), the words "Proceeds of" are substituted for the words "That all moneys arising from".

1.4b(1) HOUSE COMMITTEE ON THE JUDICIARY

H.R. REP. No. 970, 84th Cong., 1st Sess. (1955)

REVISION OF TITLE 10, U. S. CODE, ENTITLED "ARMED FORCES", AND TITLE 32, U. S. CODE, ENTITLED "NATIONAL GUARD"

JUNE 28, 1955.—Committed to the Committee of the Whole House on the State of the Union ordered to be printed

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Mr. WILLIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7049]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7049) to revise, codify, and enact into law title 10 of the United States Code, entitled "Armed Forces", and title 32, United States Code, entitled "National Guard", having considered the same, report favorably thereon and recommend that the bill do pass.

I. EXPLANATION OF REVISED TITLE 10, ARMED FORCES, AND TITLE 32, NATIONAL GUARD

1. Purpose and history

The Constitution, in article I, section 8, lists among the powers of Congress the powers "To raise and support Armies" and "To provide and maintain a Navy". In the exercise of these powers, Congress has enacted hundreds of laws regulating the structure of the armed forces and the functioning of its members, in some cases down to the smallest detail.

These laws have been enacted over a long period extending from 1789 to the present date. They have been drawn by many draftsmen, some good, some poor, and some indifferent. Even where laws have been excellently drawn, they often reflect inconsistent approaches and means of expression. The result has been laws full of contradictions, duplications, ambiguities, obscurities, and obso-

lete provisions. This problem has existed not only for the armed forces but the Government as a whole.

[p. 1]

* * * * * * *

5. Restatement of substance

The object of the new titles has been to restate existing law, not to make new law. Consistently with the general plan of the United States Code, the pertinent provisions of law have been freely reworded and rearranged, subject to every precaution against disturbing existing rights, privileges, duties, or functions. Adherence to the substance of existing law, however, has not always meant adherence to the letter of the statute. Where court decisions, opinions of officials such as the Attorney General or the Comptroller General, executive orders, regulations, or well-established administrative practice have established authoritative interpretations clarifying ambiguities in the law, the text has been reworded to express those interpretations. These changes have been explained in the applicable revision notes.

[p. 8]

1.4b(2) Senate Committee on the Judiciary

S. REP. No. 2484, 84th Cong., 2d Sess. (1956)

[No Relevant Discussion of This Section]

526-703 O - 73 - 39

1.4b(3) CONGRESSIONAL RECORD:

1.4b(3)(a) Vol. 101 (1955), Aug. 1: Amended and passed House, p. 12719

Please let me state as emphatically as I am able that this bill is not designed to make a single substantive change in existing law.

As a matter of fact we have gone to the extreme of inserting in the bill a provision—section 50—that it is the legislative purpose to restate the existing law without substantive change. Moreover, there is a line of United States Supreme Court decisions applying the well-known canon of statutory construction that in this type of bill even though Congress changes the language of the existing law, the court will construe it as a continuation of existing law without substantive change unless Congress clearly manifests an intention to make such substantive changes.

Many undue fears about this bill on that score should be allayed in view of the following:

First. The canon of statutory construction just referred to will be applied;

Second. The interpretation clause contained in § 50 and in other savings provisions in the bill, together with similar statements contained in the committee report, clearly manifest the intention of Congress to make no substantive change; * * *.

[p. 12719]

1.4b(3) (b) Vol. 102 (1956), July 23: Amended and passed Senate, p. 13953

[No Relevant Discussion]

1.4b(3) (c) Vol. 102 (1956), July 25: House concurs in Senate amendment, p. 14455

[No Relevant Discussion]

1.5 RECORD ON REVIEW AND ENFORCEMENT OF AGENCY ORDERS, AS AMENDED 28 U.S.C. §2112 (1966)

[Referred to in 42 U.S.C. §§1857c-5(f)(2)(B), 1857f-5(b)(2)(B)(ii)]

§ 2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any inter-

venor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

As amended Pub.L 80–773, § 5(a), (b), Nov. 6, 1966, 80 Stat. 1323.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted

[p. 7640]

to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer con-

cerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts. Added Pub.L. 85–791, § 2, Aug. 28, 1958, 72 Stat. 941.

[p. 7641]

1.5a RECORD ON REVIEW AND ENFORCEMENT OF AGENCY ORDERS

August 28, 1958, P.L. 85–791, §2, 72 Stat. 941

AN ACT

To authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the analysis of chapter 133 of title 28 of the United States Code, immediately preceding section 2101 of such title, is amended by inserting at the end thereof the following additional item:

"2112. Record on review and enforcement of agency orders."

"SEC. 2. Chapter 133 of title 28 of the United States Code is amended by inserting at the end of such chapter immediately following section 2111 an additional section, as follows:

"§ 2112. Record on review and enforcement of agency orders

"(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules which, so far as practicable, shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifi-

cally prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

"(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court

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designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board,

commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

"(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

"(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts."

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1.5a(1) HOUSE COMMITTEE ON THE JUDICIARY

H.R. REP. No. 842, 85th Cong., 1st Sess. (1957)

AUTHORIZING ABBREVIATED RECORDS IN REVIEWING ADMINISTRATIVE AGENCY PROCEEDINGS

JULY 23, 1957.—Ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following,

REPORT

[To accompany H. R. 6788]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6788) to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the courts of appeals and the review or enforcement of such orders on the original papers and to make uniform the law relating to the record on review or enforcement of such orders, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

* * * * * * *

PURPOSE

The purpose of the bill is to permit the several courts of appeals to adopt rules authorizing the abbreviation of the transcript and other parts of the record made before Federal administrative agencies when the orders of those agencies are to be reviewed by the courts of appeals.

In many instances much of the record made before such agencies is not relevant to the questions actually raised on appeal. This legislation, in permitting an abbreviated record to be transmitted, should result in a substantial saving of time and money without interfering with any of the appellate rights which persons now have under existing law.

BACKGROUND

In 1953 the Judicial Conference of the United States referred to its Committee on Revision of the Laws a proposal that existing

statutes be amended so as to permit administrative agencies whose orders are to be reviewed by a court of appeals to send to the court an abbreviated record where the whole record is not necessary. The proposal also provided for the authorization of the use of the original papers in appropriate cases in lieu of a transcript, the

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papers to be returned to the administrative agency upon the completion of the review proceedings. The Judicial Conference committee concluded that the proposal had substantial merit.

An examination of the Federal statutes authorizing judicial review of orders of administrative agencies by that committee disclosed that many of them now specifically require a transcript of the *entire* record to be filed by the agency in the court of appeals. It was thought that these requirements should be eliminated except in those instances where for some other reason it is necessary to file the entire record.

This objective could, perhaps, have been accomplished by a general statute repealing all inconsistent provisions of the various acts providing for judicial review of agency action. But this would have left the law in confusion as to what specific provisions would have been thus repealed by implication. The Judicial Conference committee became satisfied that in order to deal comprehensively with the problem it would be necessary to amend many of the existing statutes.

In addition it seemed advisable to that committee to add a new section 2112 to title 28 of the United States Code which would confer rulemaking power in this field upon the courts of appeals with the approval of the Judicial Conference. Such a statute should, the committee thought, be modeled upon section 6 of the Hobbs Act of December 29, 1950 (5 U. S. C. 1036), which provides for uniform rules promulgated by the courts of appeals with the approval of the Judicial Conference.

The Committee on Revision of the Laws of the Judicial Conference accordingly prepared a tentative draft of such an amendatory statute and submitted it to all the judges of the courts of appeals and to all the agencies involved for their study and suggestions.

It received a large number of constructive suggestions which it embodied in the revision of the bill which was introduced in the 84th Congress as H. R. 6682, and which was the subject of a hearing before Subcommittee No. 3 of the House Committee on the Judiciary on May 17, 1956. Thereafter a further document was compiled made up of hearings, Government agency reports, and

other comments (hearings, Serial No. 25, House Committee on the Judiciary, 84th Cong.), and was made available to all interested organizations so that their views could be obtained on the proposed legislation.

When the legislation (H. R. 6788) was introduced in this Congress, further hearings were held. The Judiciary Committee has considered the suggestions and feels that the instant bill, as amended, will make a valuable contribution to the law of appellate administrative procedures.

The bill has been approved in principle by the American Bar Association. It incorporates the recommendation of the President's Conference on Administrative Procedure in this field. It has the approval of the Judicial Conference of the United States.

STATEMENT AND ANALYSIS OF BILL

The instant bill would add to title 28 of the United States Code a new section 2112 entitled "Record on review and enforcement of agency orders." The section includes enforcement as well as review proceedings in the courts of appeals.

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Subsection (a) of new section 2112 as set out in section 2 of the bill gives the courts of appeals power to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and the contents of the record in all such proceedings instituted in those courts to review orders of Federal administrative agencies, unless present law affecting those agencies specifically provides a procedure on the subject. The general power granted by section 2112 (a), however, will render separate statutory provisions unnecessary in the future.

The section also provides that the rules of court may authorize the Federal administrative agency concerned to file a certified list of the materials comprising the record and retain the actual papers in its physical custody to be transmitted to the court only when and if required by the court in its consideration of the case. This has been a procedure which has been recently tried in several of the appellate courts and has been found quite feasible, saving both time and money.

As the result of a suggestion by the Securities and Exchange Commission subsection (a) also includes a provision providing that if review proceedings have been instituted in two or more courts with respect to the same order, the Federal administrative agency involved shall file the record in that court in which a

proceeding was first instituted. The courts in which other proceedings are pending thereupon will transfer their proceedings to the court of appeals in which the record has been filed. In the interest of justice and for the convenience of the parties, such court may thereafter transfer the proceedings to another court of appeals.

Subsection (b) of proposed section 2112 provides for the abbreviation of the record by the inclusion only of such material as the rules of the court may require, or as the parties, including parties permitted to intervene by the court, may stipulate, or as the court may designate by order. The stipulation or order may provide in an appropriate case, such as a petition for a consent decree enforcing a National Labor Relations Board order, that no record at all be filed. There are in the courts of appeals many cases in which the National Labor Relations Board petitions the court to enter an enforcement decree which has been consented to by the parties concerned. The Board under present law must spend the time and public money required to send the court a complete transcript of the record before the latter can enter the decree requested. Subsection (b) will permit dispensing with the filing of the record in such a case, and a decree may be entered upon the petition and consenting answer or stipulation.

The provisions of subsection (b) will also enable the parties to abbreviate the record by eliminating all material not relevant to the actual questions raised on review, with consequent saving of time and expense. Provision is made, however, that additional portions of the record may be ordered by the court if found to be needed.

If the correctness of a finding of fact is in issue, subsection (b) requires all the evidence to be included in the record except such part as the parties, by stipulation, agree to omit as wholly immaterial to the questioned finding. This provision will enable the court to perform its duty in cases under section 10 (e) of the Administrative Procedure Act to "review the whole record or such portions thereof as may be cited by any party."

Several of the Federal agencies advised the committee that in some instances it would not only delay proceedings but it would be more

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costly to abbreviate the record than it would be to send it in its entirety to the court of appeals. The subsection therefore contains a provision giving Federal agencies the right, at their option, to file the entire record instead of an abbreviated record.

The American Bar Association suggested, among other things, that the petitioner for review and the respondent in enforcement proceedings, should also have the right, at their option, to require the filing of the entire record. In accordance with this recommendation, the bill provides for the filing of the entire record of the proceedings upon such request.

Subsection (c) of new section 2112 as set out in section 2 of the bill authorizes the transmittal of certified copies instead of the original papers. A number of agencies pointed out that many of their records are public records which are required to be kept in their offices open to public inspection. It was also pointed out that in many instances an agency must retain the original papers for use in connection with a related case which is before it but which is not on review. The subsection therefore contains a provision authorizing the transmittal of the original papers at the option of the agency. It also provides that this situation may pertain to a part, as well as to the whole of, the record so that an agency may transmit some original papers and certified copies of others. All original papers and certified copies are to be returned to the agency at the conclusion of the case.

The bill is not intended to apply to the review of decisions of the Tax Court, which is not an administrative agency, or to the review of such agency orders as are by law reviewable by the district courts, such as exclusion and deportation orders. The Department of Justice has suggested that this be made explicit in the proposed legislation. Therefore, subsection (d) has been added to the proposed section 2112 to clarify the congressional intent.

Many of the statutes providing for the enforcement or review of agency orders provide that the courts of appeals acquire jurisdiction upon the filing of the petition for review. Many others provide, however, that jurisdiction is not acquired by the courts until the filing of the transcript of the record. It was pointed out at the hearing that this latter provision is illogical and unwise, illogical since it places it within the power of the Federal agency to delay the acquisition of full jurisdiction by the court, and unwise since it raises a serious question as to the extent of the court's power to make orders relating to the filing of the record or other preliminary orders between the time of filing the petition for review and the time the record is actually filed. Accordingly, to take care of this situation, the language of the bill adopts the pattern of the Hobbs Act (5 U.S.C. 1036) relating to the review of orders of certain Federal agencies, and proposes to amend the various stat-

utes to provide in all cases that the reviewing court shall acquire jurisdiction upon the filing of the petition on review.

At the hearings the committee's attention was called to the fact that the Federal Trade Commission act, the Clayton Act, the Packers and Stockyards Act, the National Labor Relations Act, the Federal Power Act and the National Gas Act provide that an agency acting under and pursuant to them may modify or set aside its order after a petition for review has been filed and up to the time of the filing of the record. Giving exclusive jurisdiction to the courts upon the filing of the petition, as the instant bill, as introduced, provides, could work

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undue hardship. The bill was therefore amended to provide that although jurisdiction shall be immediately acquired by the court upon the filing of a petition for review, such jurisdiction will be concurrent and shall become exclusive only upon the filing of the record.

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CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italics:

TITLE 28. UNITED STATES CODE

CHAPTER 133. REVIEW—MISCELLANEOUS PROVISIONS

* * * * * * *

2112. Record on review and enforcement of agency orders.

* * * * * * *

§ *2112. Record on reviews and enforcement of agency orders.*

(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or en-

force orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts

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in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, or (2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules of such court designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the

court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question, all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district court.

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SEC. 3. (a) The sixth sentence of subsection (b) of section 5 of

the Federal Trade Commission Act, as amended (52 Stat. 112): "Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until [the transcript of] the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section."

(b) The second and third sentences of subsection (c) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 112–113): "A copy of such petition shall be forthwith [served upon] *transmitted by the clerk of the court to* the Commission, and thereupon the Commission [forthwith] shall [certify and] file in the court [a transcript of] the [entire] record in the proceeding, [including all the evidence taken and the report and order of the Commission] *as provided in section 2112 of title 28, United States Code*. Upon such filing of the petition [and transcript] the court shall have jurisdiction of the proceeding and of the question determined therein *concurrently with the Commission until the filing of the record and shall have power to* make and enter [upon the pleadings, evidence, and proceedings set forth in such transcript] a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite."

(c) Subsection (d) of section 5 of the Federal Trade Commission Act, as amended (52 Stat. 113):

"(d) [The] *Upon the filing of the record with it the* jurisdiction of the court of appeals of the United States to affirm, enforce, modify or set aside orders of the Commission shall be exclusive" (15 U.S.C., § 45, Federal Trade Commission). . . .

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