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GOVERNMENT

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CLEAN AIR ACT AMENDMENTS OF 1975

SUMMARY OF THE BILL (H.R. 10498)

AS REPORTED BY THE

SUBCOMMITTEE ON HEALTH AND
THE ENVIRONMENT

DOCUMENTS

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CLEAN AIR ACT AMENDMENTS OF 1975

SUMMARY OF THE BILL

SECTION 1—SHORT TITLE

SECTION 2—AUTHORIZATIONS

This bill authorizes appropriations of \$175,000,000 for FY 1976; \$50,000,000 for the July–September 1976 period; \$200,000,000 for FY 1977; and \$200,000,000 for FY 1978. None of this authorization is for research activities under the Clean Air Act. Authorizations for research are handled by the Committee on Science and Technology. Authorizations of appropriations for the entire Clean Air Act, including research, were \$300,000,000 for FY 1975.

SECTION 101—UNREGULATED POLLUTANTS

This section requires the Administrator to promulgate regulations to control several currently unregulated air pollutants, unless the Administrator finds within one year that these pollutants are not hazardous to public health. The pollutants in question are vinyl chloride, cadmium, arsenic, and polycyclic organic matter (POM's).

This section also requires the Administrator to promulgate a one-hour national primary ambient air quality standard for NO₂, unless the Administrator finds that the present annual average standard for NO₂ is adequate to protect public health.

The section also requires the Administrator to study these unregulated pollutants and includes sulfates within the scope of the study.

SECTION 102—BASIS OF ADMINISTRATIVE STANDARDS

This section establishes the standard of proof which the Administrator must meet before promulgating regulations controlling the emission of any air pollutant from any class of sources under this Act. Regulation is authorized only if emissions of the pollutants from that class of sources contributes to air pollution which "may reasonably be anticipated to endanger public health or welfare."

SECTION 103—COMPLIANCE DATE EXTENSIONS (STATIONARY SOURCES)

This section authorizes the States and the Administrator to grant extensions of compliance deadlines for stationary sources under the State implementation plans. An extension may be granted for up to five years. An extension may only be granted after notice and a formal hearing on the record.

There are six grounds upon which an extension may be granted; (1) the lack of adequately demonstrated technology to meet necessary emission limitations; (2) a shortage of clean fuels or technology

(which has been adequately demonstrated); (3) unavailability of means of compliance due to strike, embargo, or other emergency; (4) delay of construction of a replacement facility; (5) temporary unavailability of financing for procurement of clean fuels or technology; (6) to encourage use of innovative emission control technology.

Sources receiving extensions must meet compliance schedules and use the best interim control measures during the extension period.

SECTION 104—ASSESSMENT OF CIVIL PENALTIES

This section authorizes the courts to impose civil penalties of up to \$25,000 per day for violations of the Clean Air Act. The courts are directed to take into account the size of the business, and the seriousness of the violation, in setting the amount of the penalty.

SECTION 105—EXCESS EMISSION FEES

If a major stationary source receives a compliance date extension (see sec. 103) and if the source was primarily at fault for its inability to comply with applicable emission limitations, then it must pay an excess emission fee.

The amount of the fee is to be based on a schedule of rates promulgated by the Administrator. The schedule of rates must be designed (1) to prevent any extension from creating a competitive disadvantage for sources receiving an extension (over those sources which comply on time) and, (2) to encourage compliance as rapidly as practicable.

The fee may not exceed \$5,000 per day. The Administrator is authorized to reduce or mitigate the fee for any source under certain specified conditions. The fee may only be applied to major stationary sources, i.e. those which emit over 100 tons of pollutant per year.

As with other provisions of the Act, judicial review of action of the Administrator under this section is expressly authorized.

The purposes of the excess emission fee are: (1) to encourage good faith efforts to comply; (2) to prevent noncomplying sources from gaining an advantage over complying sources with whom they compete; (3) to permit a middle course of action to be followed in case of noncompliance, rather than plant shutdowns or noncompliance without penalty.

SEC. 106—COAL CONVERSION

This section deals with two main subjects: (1) compliance date extensions for sources prohibited from burning oil or natural gas, or both; and (2) whether to require continuous or intermittent control of pollutants from stationary sources.

Coal Conversion.—This section amends section 119 of the Clean Air Act, as adopted by the Energy Supply and Environmental Coordination Act of 1974 (P.L. 93-319). It permits compliance date extensions for sources converting to coal to last until 1980, instead of 1979, as under existing law. A further extension up to as late as 1985 could be granted under section 103 of the bill.

The amendments to P.L. 93-319 also permit extensions for those coal burning sources (subject to an FEA order not to switch to oil or natural gas), which had earlier intended to meet applicable emission limits by switching to one of these fuels and had earlier received

a variance or plan revision to do so. Under existing law, extensions are not authorized for these sources.

Also under current law, a source which is ordered to convert from burning petroleum products or natural gas to coal may not receive an extension of an emission limitation for any pollutant if the air quality anywhere in the region exceeds the primary health standard for that pollutant. This is called the "regional limitation". This new section would make the "regional limitation" rebuttable (and thus permit extension) upon certain findings. The findings would basically be that emissions from the source would not significantly affect air quality in the areas of the region in which primary standards are being exceeded.

This section also requires concurrence by the Governor as a condition for granting this type of extension. Concurrence by the Governor is not required under existing law.

Continuous Controls.—The amendments also affirm the decisions of two U.S. Court of Appeals cases that the Act requires continuous emission reduction measures to be applied. Thus, intermittent control measures (to be applied only in case of adverse weather conditions), increasing stack heights, or other pollution dispersion techniques would not be permitted as final compliance strategies.

The purpose of this amendment was to ensure the use of control measures which (1) would be reliable and enforceable; (2) would reduce overall pollution exposures to regulated pollutants (and to uncontrolled derivative pollutants, such as sulfates); (3) prevent spreading the pollution to presently clean areas; (4) leave more air resources for the growth of new industry and jobs.

SECTION 107—STRATOSPHERE AND OZONE PROTECTION

This amendment provides for a two-year study on the cumulative effects of various substances and activities on the stratospheric ozone layer, which screens and limits solar radiation exposures on Earth. The study is to be conducted by the Administrator, in cooperation with the National Academy of Sciences, and an interagency task force.

At the end of the two-year study (or earlier under specified circumstances), the Administrator may, upon making certain findings, promulgate regulations to protect the stratospheric ozone layer. Such regulations may be promulgated only if the Administrator finds that the ozone layer (and public health or welfare) may reasonably be anticipated to be endangered. Regulations are required to take into consideration feasibility and costs of controlling any dangerous substance or activity.

Regulations must be submitted to Congress and may not take effect for 60 legislative days after submission. If either House passes a disapproval resolution within that 60 day period, the portion of the regulations which have been disapproved may not become effective. Expedited consideration by Congress is provided for.

SECTION 108—PREVENTION OF SIGNIFICANT DETERIORATION

In 1972, the Supreme Court by a 4-4 vote upheld a lower court decision which ruled that the Clean Air Act required "prevention of significant deterioration" of air quality in clean air areas of the

country. The court did not define what constituted "significant deterioration" or require specific measures to prevent it.

This section affirms the Supreme Court decision and specifies what is "significant deterioration" which must be prevented. It assigns to the States the responsibility for defining for areas within each State the degree of allowable pollution increase and deciding the means for preventing "significant deterioration" which are to be employed.

Purposes.—The section has several purposes:

- (1) to protect health from harmful exposures occurring at levels below the ambient standards;
- (2) to protect national parks and other areas of special natural, recreational, scenic, or historic value;
- (3) to prevent competition for industry among States to be waged by allowing significant deterioration of air quality;
- (4) to prevent interstate air pollution which significantly degrades air quality;
- (5) to assure careful evaluation of all consequences and opportunity for full public participation prior to a State's decision allowing deterioration in existing clean air areas.

Area Classified Plans.—Each State must classify those areas which are cleaner than the national ambient air quality standards as Class I, Class II, or Class III for all pollutants for which national ambient air quality standards are established. However, for any pollutant other than sulfur dioxide or particulates, a State may develop any other measures to prevent significant deterioration, and the Administrator must approve the State's plan if he determines that the States plan will carry out the purposes stated above at least as effectively as an area classification plan.

Initial Classification of Areas.—Initially most areas which are cleaner than the ambient standards would be classified as Class II. The provision restricts Mandatory Class I areas to national parks and national wilderness areas, which exceed 10,000 acres in size. Wilderness areas, national parks and international parks between 1,000 and 10,000 acres, as well as national preserves, national monuments, national recreation areas, and national primitive areas in excess of 10,000 acres would be Discretionary Class I areas. These Discretionary Class I areas would convey Class I status initially with subsequent reclassification to Class II possible at the discretion of the State. According to Administration estimates, the Mandatory Class I areas amount to 1.2 per cent of the land area of the United States.

Reclassification of Areas.—In general, the State would be free to reclassify areas as Class I, II, or III at any time. Reclassification must be preceded by a public hearing and preparation of an analysis of the health, environmental, economic, social and energy effects of the proposed reclassification. Any reclassification of a Federal land area initially classified as Class I and any reclassification of any areas to Class III must be approved by appropriate local governments and the State legislature and must not interfere with the classification of any other area. Discretionary Class I areas (listed above) may only be reclassified as Class II. These areas are:

The Administrator is not authorized to disapprove any State's reclassification, unless the reclassification violates one of the aforementioned requirements or limitations.

This provision limits the Administrator's authority with respect to the States in several ways. Of particular importance are the following: (1) The Subcommittee bill restores the State's right to regulate air quality over Federal lands, which the Administrator's regulations confers on Federal land managers; (2) the Subcommittee bill eliminates the authority which the Administrator has under current regulations to override a State's classification of any area on the ground that the State improperly weighed energy, environment, and other factors; (3) the Subcommittee bill prohibits the Administrator from compelling any State to impose a uniform or automatic no growth buffer zone around any area.

Effect of Area's Classification.—Depending on an area's classification, the following limitations will apply to that area:

ALLOWABLE POLLUTION INCREMENTS AND ALLOWABLE POLLUTION CEILINGS

	Allowable increments	Allowable ceilings
Class I.....	2 percent of lowest national standard (all pollutants, except particulate). 10 percent of lowest national standard for (particulate).	75 percent of lowest national standard (all pollutants).
Class II.....	25 percent of lowest national standard (all pollutants).....	Do.
Class III.....	50 percent of lowest national standard (all pollutants).....	Do.

An "allowable increment" refers to the amount of *increase* in pollution in any area which is permissible above a baseline pollution level. The baseline pollution level is the level of pollution calculated to exist, assuming (1) plant capacities in being on January 6, 1975 (when the classification systems first became effective under the Administrator's regulations), and (2) additional plant capacities for new sources which receive new source permits prior to date of enactment. (The baseline level is *not* limited to, but includes, the natural or background pollution levels in existence prior to any industrial activity). The allowable increment is the amount of increased pollution permissible beyond baseline levels for any area. Thus, sources in existence on date of enactment will not be subject to control under this section, because pollution from existing sources is included in the baseline. No rollback in emissions from existing sources would be required, whether an area is classified as Class I, II, or III.

An "allowable ceiling" refers to the absolute pollution levels which may not be exceeded as a result of increases in pollution beyond the baseline for any area. It does not refer to any particular amount of permissible increase. New sources thus would not be permitted to cause or contribute to air pollution concentrations exceeding three-fourths or the lowest national ambient air quality standard in any area, regardless of whether the area is classified I, II, or III.

Permit provisions.—Only new or modified major stationary sources are required to obtain a State permit prior to construction. A major stationary source is defined to include only those direct pollution sources with design capacity to emit 100 tons or more pollutant per year. Thus, indirect and mobile sources and smaller stationary sources would not be subject to permit provisions.

The permit program is to be operated by States. The purpose of the permit is to assure that the allowable increments and allowable ceilings will not be exceeded as a result of emissions from any new

or modified major stationary source. States may issue permits based on less than one year of prior air quality monitoring, if the Administrator finds that an adequate analysis of the air quality impact of any major stationary source can be achieved within a shorter period.

Deadlines.—State plans for control of sulfur dioxides and particulates must be submitted within six months after date of enactment. State plans for other pollutants must be submitted within 18 months. The Administrator must approve the plan within four months, if it meets applicable requirements. If not, the Administrator must propose a plan for that State within four months after disapproval and promulgate it within 90 days (but after notice and public hearing) if the State in the meantime has failed to submit an approvable plan.

SECTION 109—TRAINING

This section prohibits the Administrator from charging fees for training of personnel employed by State or local air pollution control agencies. Until recently, training was provided free of charge to such employees. However, pursuant to directive of the Office of Management and Budget fees of up to \$90/day have been imposed on State and local governments. The Subcommittee felt that the imposition of fees on such personnel would be inconsistent with the overriding objective of encouraging State and local governments to assume primary responsibility for implementing and enforcing the Act.

SECTION 110—REVIEW OF STANDARDS

This section requires the Administrator to review the technical criteria and national ambient air quality standards at least once every two years and to revise the standards and promulgate new ones as appropriate. In deciding whether revision or promulgation of new standards is necessary, the Administrator must consider the advice of an independent scientific review committee. The committee is to be comprised of seven members, including at least one physician, one representative of the National Academy of Sciences, and one person representing State and territorial air pollution administrators.

SECTION 111—NEW SOURCE STANDARDS OF PERFORMANCE

The existing Clean Air Act requires the promulgation of nationally applicable standards of performance (emission standards) for new or modified major stationary sources of pollution. This section amends that provision to require that major new sources meet standards based on the degree of control achievable through use of the best technological system of continuous emission reduction.

This amendment makes four significant changes. First, it clarifies that intermittent or alternative control measures are not permissible means of compliance. Second, it indicates that adequately demonstrated technology is to be the basis of the standard, not merely reliance on use of clean fuels. Third, it requires the Administrator to take into account energy requirements (in addition to costs) in determining which technologies have been adequately demonstrated. Fourth, it requires the Administrator to consider nonair quality health and environmental impacts in making that determination.

The section also makes clear that standards adopted for existing sources under section 111(d) of the Act are to be based on available means of emission control (not necessarily technological) and must, unless the State decides to be more stringent, take into account the remaining useful life of the existing sources.

SECTION 112—VARIANCES FOR TECHNOLOGY INNOVATIONS

This section authorizes the Administrator to grant a variance from Federal new source standards of performance in order to encourage development and application of new, improved, but as yet not adequately demonstrated, technological systems for meeting the standards.

In order to grant the variance the Administrator must find that the new technology is likely to achieve greater emission reduction than presently required or to achieve equivalent emission reduction at lower economic, energy, or environmental costs. The Administrator must also be satisfied that the new technology will not cause or contribute to an unreasonable risk to health, welfare, or safety. A third condition for granting the variance is that the Governor of the State where the new source intends to locate consents to the variance. Fourth, all national ambient air quality standards must be attained and maintained. Fifth, the number of variances must be limited to the amount necessary to test the new technology.

A variance is limited in duration to ten years from date of issuance or the date on which the Administrator finds the new technology is an irremediable failure, whichever is sooner. In case of such an uncorrectable failure, the Administrator is required to allow additional time for the source to obtain and use technology which has been adequately demonstrated to meet the standards.

SECTION 113—FEDERAL FACILITIES

The purposes of this provision are several: (1) to clarify that section 118 of the existing Clean Air Act constitutes a waiver of sovereign immunity, such that Federal facilities and persons operating them must comply with all State and local air pollution control requirements; (2) to clarify that the Federal facilities must comply with "procedural" as well as "substantive" requirements; and (3) to authorize enforcement against such facilities and persons by means of injunctive relief and contempt proceedings.

These requirements continue to be subject to the President's authority to grant exemptions under section 118 of the existing Act.

SECTION 201—LIMITATIONS ON INDIRECT SOURCE REVIEWS AUTHORITY

This section establishes several limitations upon the Administration's authority to require State or local governments to adopt or implement indirect source review programs. An indirect source is a facility or property which although it does not directly pollute the air, does attract traffic in sufficient amounts to cause or contribute to unhealthy levels of air pollution.

First, before an indirect source review program may be required to be implemented in any area, the Administrator must find that such a program is necessary, i.e., that the national primary (health-related) ambient air quality standards will be exceeded after the statutory

deadlines for attainment and maintenance of such standards notwithstanding the new motor vehicle emission standards and application of direct stationary source and transportation controls. In making the finding of necessity, the Administrator is directed to assume that the requirements originally applicable to 1975 and 1976 new cars under the 1970 Act were met on time, instead of delayed. This assumption reduces the likelihood that the determination of necessity will be made for any area.

The second limitation is that the Administrator may not require such a program unless the program is likely to be effective to assist in attaining or maintaining the primary (health) standards. In making this finding, the Administrator must take into account the advice of the National Academy of Sciences, which is directed to undertake an independent study of this issue.

The third limitation, which applies to most informal rulemaking under the Act, is that the Administrator must follow the procedural requirements established under section 305 of the bill. Findings of the Administrator pertaining to the efficacy and necessity of indirect source review programs would be subject to judicial review in connection with review of any regulation promulgated by the Administrator.

The fourth limitation is that even if such programs are found to be necessary and effective and even if procedural requirements are met, the Administrator may not impose or administer Federal regulations for indirect sources. The programs are to be carried out by State or local governments. If a State fails to adopt or enforce an adequate program, the Administrator has only two remedies. He may seek a court order for the State to carry out such a program. He may petition the court to prevent construction of new indirect sources which do not have permits from approved State programs. Or he may take both actions. The only exception to the rule against Federal implementation of indirect source review programs is with respect to indirect sources owned, operated or assisted by the Federal government.

The fifth limitation is that the Administrator is not authorized to review the State's individual indirect source permit decisions. Only if the State improperly granted permits in a substantial number of instances could the Administrator act to disapprove a program previously approved under this section. Even then, the effect of the disapproval would only be prospective (i.e., permits which had previously been issued by the State could not be revoked.)

The sixth limitation is that the Administrator must permit Governors to grant variances from Federally-approved State programs under certain specified conditions, even though the effect of such variances is to permit air pollution levels in excess of the primary (health) standards. Variances may last until as late as January 1, 1985, in the Governor's discretion. At the expiration of any variance, the indirect source will be required to conform to the State's implementation plan, which must then attain and maintain primary standards.

The seventh limitation relates to timetables under this section. Under the statutory timetables, indirect source review programs would probably not become effective until 39 months after date of enactment. During this period, States and localities would be free to revoke or suspend any existing indirect source programs or to adopt

and enforce any indirect source program. The Administrator may not compel or prohibit any such action during this interim period.

In related provisions, the Subcommittee adopted an amendment deleting from the Clean Air Act the words "land use" controls. Where necessary for attainment or maintenance of national ambient air quality standards, air quality maintenance plans and preconstruction review of direct pollution sources are provided. Even these measures could not be required if a State adopts a plan which is adequate to assure timely attainment and maintenance of the national ambient air quality standards without such measures.

SECTION 202—EXTENSION OF TRANSPORTATION CONTROL COMPLIANCE DATES

This section authorizes the Administrator to extend the compliance deadlines for implementation of various transportation control measures which, under current law, are required to become effective not later than June 30, 1977. If the control measures in question could not be implemented in accordance with current timetables without serious social or economic disruption, then the Administrator may grant an extension.

An extension may last until as late as January 1, 1985. It may be granted even though failure to implement the measure as originally scheduled would cause or contribute to pollution levels exceeding national primary (health) ambient air quality standards.

If an extension is granted, the measure extended must be implemented according to a new schedule of compliance. In general, the measure would have to be implemented as expeditiously as practicable. Extensions beyond January 1, 1980, are authorized only where commitments are made as part of the plan to improve public transportation.

In addition to the extensions authorized by this section, the deletion of certain measures from Federally-approved State plans is authorized. The measures authorized to be deleted involve certain gas rationing provisions and certain vehicle retrofit requirements applicable to in-use vehicles. If the State's plan is no longer adequate to assure timely attainment and maintenance of the national primary (health) standards without such strategies, it would have to be revised within nine months.

The mere fact that a State obtains an extension of any transportation control measure does not provide basis for the Administrator to require revision of the State plan. The State may not be required to revise its plan to include more stringent measures if the plan would have been adequate but for the granting of any extension under this section.

The section does require the Administrator to review all State plans not later than June 30, 1976, to determine their adequacy. This review was felt by the Subcommittee to be necessary in light of such events as the administrative suspensions and congressional action delaying auto emission standard deadlines, the prohibition on parking surcharge requirements, and the unworkability of certain strategies included initially in the State plans. If the State plan is not adequate even assuming no delays had been granted under the 1975 Amendments,

then the plan would have to be revised by the State, in accordance with provisions of existing law pertaining to plan revision.

The term "transportation control measure" is defined to exclude all regulation of parking. The purpose of this exclusion is to assure that all regulation of parking is subject to the limitations of section 201 on regulation of indirect sources.

SECTION 203—LIGHT-DUTY MOTOR VEHICLE EMISSIONS

Under this provision, statutory emission standards for new automobiles and other light-duty vehicles (requiring a 90% reduction in HC, CO, and NOx emissions) would be delayed until model year 1980. During model years 1978 and 1979, standards would be frozen at 1975 California interim standards. While the full 90% reduction would be required in model year 1980, in the case of the NOx standards, the Administrator would be authorized to suspend the standards (for model years 1980-84), setting higher interim levels upon a determination that: (1) it is not technologically feasible to meet the standard within the time permitted; or (2) meeting the 90 percent reduction requirement would result in an excessive fuel penalty.

Thus, applicable Federal standards would be as follows:

	HC(gm/mi)	CO(gm/mi)	NOx(gm/mi)
1975-76	1.5	15.0	3.1
1977	1.5	15.0	2.0
1978-9	.9	9.0	2.0
1980 plus	.41	3.4	.4

The Administrator would be authorized to grant up to five one year suspensions of the NOx standard, indicated above. The maximum allowable interim standard would be as follows:

	NOx gm/mi
1980	1.5
1981	1.5
1982	1.0
1983	1.0
1984	1.0

The full 90 per cent reduction in NOx would not have to be achieved under a separate provision of this section. If the manufacturer of any model could meet the following standards for 10 years or 100,000 miles (instead of the usual five years or 50,000 miles), then compliance with the .4 NOx standard would not be required for that model.

	gm/mi
HC	.41
CO	3.4
NOx	1.0

The purpose of this provision is to create an incentive for development of inherently clean and durable technologies while continuing to provide protection of public health from automotive emissions.

The section also adds a new section 214 to the Clean Air Act, requiring the Administrator to study and report annually to Congress on unregulated pollutants being emitted from various systems (controlled and uncontrolled).

Finally, the section makes it a prohibited act for any manufacturer seeking a suspension to have failed to make maximum feasible efforts for that manufacturer to develop a system which could meet the standards without an excess fuel penalty.

SECTION 204—EMISSIONS FROM HEAVY-DUTY VEHICLES OR ENGINES AND FROM MOTORCYCLES

This section requires the Administrator to promulgate emission standards for model years 1978–82 new heavy-duty trucks, buses, and motorcycles based on use of the best technology which has been adequately demonstrated. For 1983 and subsequent model years, standards must require a 90 per cent reduction of hydrocarbons (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from baseline levels, i.e. uncontrolled levels emitted by gasoline-powered vehicles or engines of a comparable class or category. Standards for 1983 and beyond are also required to provide for a 90 per cent reduction of smoke emissions from baseline levels, i.e., uncontrolled levels emitted by diesel-powered vehicles or engines of a comparable class or category. Standards under this section would apply both to gasoline and diesel-powered vehicles and engines.

Upon making certain findings, the Administrator is authorized to revise one or more of the standards applicable to model year 1983 and 1984 vehicles or engines for any class or category of vehicles or engines under this section. If technology to meet the standards is unavailable for model year 1983 or if an excessive fuel penalty would result from application of available technology, there would be basis for establishing revised (less stringent) standards.

The revised standards promulgated by the Administrator would be subject to Congressional review and disapproved by either House. In the event of a disapproval of any standard, the applicable standard would be that which was in effect for model year 1982.

The term "heavy-duty vehicle" is defined to mean vehicles (including trucks and buses) weighing over 6,000 pounds. The term excludes fixed rail vehicles and vehicles (such as farm equipment) which are not designed primarily for use on highways or roads.

SECTION 205—AIRCRAFT EMISSION STANDARDS

This section authorizes the Secretary of Transportation to disapprove at any time any aircraft emission standard promulgated by the Administrator, if DOT finds the standard would create a hazard to aircraft safety. If DOT disapproves, then the emission standard would cease to be effective (or may not take effect, if the standard is yet to take effect).

SECTION 206—ASSURANCE OF PROTECTION OF PUBLIC HEALTH AND SAFETY

This section requires the manufacturers of new motor vehicles or new motor vehicle engines to bear the burden of proving, as a condition of obtaining a certificate of conformity, that the emission control systems or devices that are to be used to meet emission standards will not produce unregulated pollutants in concentrations which

create an unreasonable risk to public health or welfare. The manufacturer must also prove the safety of any such system or device.

SECTION 207—TEST PROCEDURES FOR MEASURING EVAPORATIVE EMISSIONS

Recent information demonstrates that the methods used by the Administrator and the State of California to measure evaporative emissions from new motor vehicles have failed to capture and thus to record the bulk of evaporative emissions which actually occur. Consequently, California has revised its test procedure to use a method which measures all evaporative emissions. This section requires the Administrator to use test procedures which measure all evaporative emissions, effective for model year 1978 light-duty vehicles (and 1978 or later for heavy-duty vehicles or engines).

SECTION 208—RAILROAD LOCOMOTIVE EMISSION STANDARDS

This section establishes a new part C of title II of the Clean Air Act (new sections 235-7). The new subtitle directs the Administrator to study the extent to which emissions from railroad locomotives affect air quality and the technological feasibility of controlling such emissions. Within one year after date of enactment, the Administrator would be required to promulgate national emission standards for railroad locomotives and equipment.

As in the area of aircraft safety, the Secretary of Transportation may disapprove any emission standard under this section promulgated by the Administrator if he finds it would create a hazard to railroad safety. The Secretary of Transportation also is given responsibility for enforcing the railroad emission standards.

Once standards are promulgated States and local governments would be preempted from adopting or enforcing emission standards which are not identical to the Federal standards.

SECTION 209—MOTOR VEHICLE PARTS CERTIFICATION AND STUDY BY FTC

This section was adopted in order to address the problem of potentially anti-competitive effects of the 5 year/50,000 mile performance warranty under section 207(b) of the existing Clean Air Act. Although the warranty in question has not become effective yet (and according to the Administrator, is unlikely to become effective prior to model year 1979 vehicles), the Subcommittee was concerned that unless certain preventive measures were put into effect prior to the effective date of the warranty, the warranty may result in anti-competitive effects harmful to small business, the marketplace, and consumers as well.

In response to these concerns, the new section changes the duration of the performance warranty under section 207(b) from 5 years or 50,000 miles to 18 months or 18,000 miles. The design warranties under section 207(a), the recall authority under section 207(c), the certification and assembly-line test provisions under section 206, and the "useful life" definition under section 202(d) are not affected by this change.

This section, secondly, requires the Administrator to promulgate regulations within two years after date of enactment establishing a voluntary parts certification program. Under this program, the manufacturer of any motor vehicle part could certify that use of that part in specified vehicles or engines would not result in a failure of the vehicle to meet emission standards. The use of a certified part would not provide grounds for the vehicle manufacturer to invalidate the customer's performance warranty, even though the part may have been manufactured and sold by an independent parts supplier and installed by an independent garage.

Third, the new section requires the Federal Trade Commission to study regulations promulgated by the Administrator. If the FTC finds that in light of the Administrator's regulations no significant anticompetitive effects would result from a 5-year/50,000 mile performance warranty, then the 5-year/50,000 mile performance warranty would be restored.

This section requires annual inspection of light-duty vehicles which are registered to persons who live or maintain their principal place of business in an air quality control region where transportation control measures apply as of June 30, 1975. Thus, the provision only applies to 29 cities and surrounding areas, where the national primary ambient air quality standards for mobile source-related pollutants are being exceeded. The purpose of the annual inspection is to assure that vehicles will remain relatively non-polluting in use.

The section is patterned on the New Jersey inspection and maintenance program which has been in effect for well over a year. The section establishes standards applicable to in-use vehicles. The standards reflect that degree of emission control which is achievable by in-use vehicles which are maintained reasonably well. The standards do not apply to pre-1968 vehicles, antique cars, and certain other vehicles.

If a vehicle is found not to be in compliance with the standards as a result of the emission inspection, then the operation or registration of the vehicle would be prohibited, with certain exceptions. The exceptions are as follows: (1) a noncomplying vehicle may be operated for a temporary period to permit the vehicle to be brought into compliance; and (2) a noncomplying vehicle may be operated and registered if it has received a major tune-up within three months prior to the inspection or thereafter. States would retain authority to impose more stringent requirements, but the Administrator would not be authorized to compel the States to do so.

The inspection requirements will become effective one year after date of enactment. To the extent practicable, use of existing State motor vehicles inspection and testing facilities is encouraged.

SECTION 211—COSTS OF VAPOR RECOVERY

Regulations promulgated under the existing Clean Air Act require the installation of vapor recovery devices at retail gasoline stations in certain highly polluted areas. The purpose of the requirements is to control hydrocarbon emissions which result when the distributor of fuel delivers it to storage tanks at the gasoline station and when the retailer fills the ultimate consumer's gasoline tank from the gas pump.

This section creates a new section 320 of the Act. It provides that the costs of vapor recovery systems would be borne by the fuel distributor, not the retailer. This section also prohibits the distributor from transferring the costs of vapor recovery to the retailer. Finally, the distributor is required to reimburse the retailer for any such costs incurred prior to date of enactment.

SECTION 212—TESTING BY SMALL MANUFACTURERS

This section exempts vehicle manufacturers with projected annual U.S. sales of 300 or less from the requirement for 50,000 mile certification testing of such vehicles.

SECTION 213—CALIFORNIA WAIVER

This section is intended to broaden and strengthen the State of California's authority to prescribe and enforce separate new motor vehicle emission standards from the Federal standards. The authority which California has under existing section 209 of the Act is not limited in any respect by this provision. Rather, it permits the State to have its standards considered as a package and would require the Administrator in most instances to waive the preemption under section 209 with respect to California's standards. The Administrator would be authorized to deny such waiver only if (1) California's judgment that its standards, considered together, are at least as protective of health and welfare as Federal standards, considered together, was arbitrary and capricious; or (2) one of the findings under existing section 209(b) is made. The amendment thus confers broad discretion on the State of California to weigh the degree of health hazards from various pollutants and the degree of emission reduction achievable for various pollutants with various emission control technologies and standards.

SECTION 214—LOW-EMISSION VEHICLES

In order to encourage development of low-emission vehicles, the 1970 Clean Air Act provided for Federal procurement of such vehicles. This section provides that such vehicles should be considered as suitable substitutes for existing vehicles, even if a full range of potential uses is not achievable by each low-emission vehicle.

SECTION 215—REMOVAL OR TAMPERING WITH CERTAIN DEVICES

This section expands the existing prohibition on removal or rendering inoperative of pollution control devices or systems which are needed to meet new motor vehicle emission standards. Under current law, only manufacturers or dealers are subject to this prohibition after sale and delivery of the vehicle to the ultimate purchaser. Under this section any person who knowingly takes such action would be subject to a civil penalty, including independent gas stations and garages. If the person taking such action is an individual working on his own vehicle, then the maximum penalty would be \$1,000; otherwise, the maximum penalty remains at \$10,000 per vehicle.

This section also provides that use of parts other than original equipment manufacturer parts for purposes of repair or replacement

would not be construed in and of itself to constitute prohibited tampering with emission control systems, devices, or elements of design.

SECTION 301—REDESIGNATION OF AIR QUALITY CONTROL REGIONS

This section authorizes the Governor of each State to revise the boundaries of air quality control regions designated under the 1970 Act. Under existing law, no such boundary revisions are authorized.

The boundary revisions are to be effective only with the approval of the Administrator (and, in certain instances, the approval of Governors of nearby States which may be affected by any such revision).

SECTION 302—CONSULTATION

The current Clean Air Act requires air pollution control plans to be devised and implemented primarily at the State level. This has left many local governmental units and regional agencies with a limited (or no) role in the process, although the plans adopted by the States may have significant effects on local governments and metropolitan areas.

Section 302 is intended to correct this situation. It requires a consultation process to be established within each State. The process must assure adequate opportunity for general purpose local governments and regional agencies to present their views prior to adoption of specified measures which are of particular concern to such governmental entities.

The consultation process may take a variety of forms, so long as it adequately involves local governments and regional agencies in the State's decision-making.

SECTION 303—DELEGATION TO LOCAL GOVERNMENT

Under the current Clean Air Act, if a State fails to adopt and implement an approved plan to meet national air quality standards, the Administrator is required to do so. In order to minimize the necessity for Federal enforcement, this provision would authorize the Administrator to delegate enforcement authority to local government in the case of a plan promulgated by the Administrator.

SECTION 304—EMPLOYMENT EFFECTS

This section contains a provision, like that in the Federal Water Pollution Control Act, for the Administrator to investigate, report and make advisory recommendations concerning employer allegations that requirements under the Clean Air Act will adversely affect employment. No sanction or enforcement authority is provided under this section.

SECTION 305—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

This section establishes comprehensive procedures for most informal rulemaking under the Clean Air Act, which would apply in lieu of the Administrative Procedure Act. The section (a) specifies the rules and actions to which such procedures will apply; (b) provides

for establishment of a rulemaking docket for each of these rules or actions; (c) indicates what the record will be for the Administrator in prescribing the rule and for the courts in reviewing the rule; (d) establishes procedural rights and opportunities for public participation in the rulemaking process; (e) provides the standards of judicial review; (f) modifies certain deadlines for promulgation of rules; and (g) extends to 60 days the period for petitioning for judicial review of any such rule.

SECTION 306—EMPLOYEE PROTECTION

This section establishes a new section 317, like the provision of the Safe Drinking Water Act, to protect employees from retaliatory action by employers, if the employee is assisting in the administration of, or exercising rights under, the Clean Air Act.

SECTION 307—NOTICE TO STATES IN CASE OF CERTAIN INSPECTIONS, ETC.

This section, like a comparable provision in the Safe Drinking Water Act, requires the Administrator to give notice to States prior to undertaking certain actions, including inspections, where the Administrator intends to check on compliance with a standard adopted by the State and approved by the Administrator.

SECTION 308—EMERGENCY PROVISIONS

This section like the previous section, requires the Administrator to consult with States prior to commencing any emergency action. The section also authorizes issuance of emergency orders where public health cannot be adequately protected solely by initiating a suit for injunctive relief.

SECTION 309—INTERSTATE POLLUTION ABATEMENT

This section provides for a system of interstate notification and permits for major new sources which may significantly contribute to interstate air pollution.

SECTION 310—INTERAGENCY COOPERATION ON PREVENTION OF ENVIRONMENTAL CANCERS, HEART AND LUNG DISEASE

This section requires creation of an inter-agency task force to promote increased cooperation between EPA and HEW to quantify the relationship between environmental pollution and cancer, heart and lung disease and to find methods for preventing environmentally-induced cancer, heart, and lung diseases.

SECTION 311—CIVIL LITIGATION

This section, like a comparable provision in the Federal Trade Commission Act, authorizes attorneys appointed by the Administrator to represent the Agency in civil litigation under this Act. The Administrator's attorneys would not be authorized to appear in criminal cases (or in the Supreme Court with certain exceptions).

SECTION 312—FINE PARTICULATE STUDY

This section requires the Administrator to study and report to Congress in 18 months on health hazards and means of controlling fine particulates. The National Academy of Sciences is to participate in this study.

SECTION 313—AIR QUALITY MONITORING

This section requires the Administrator to promulgate regulations establishing a standard air quality index for monitoring and reporting of air quality data by State and local governments. It also requires the Administrator to supplement State and local monitoring stations with Federal stations where necessary.

SECTION 314—TECHNICAL AND CONFORMING AMENDMENTS

This section includes miscellaneous technical and conformity amendments.

SECTION 315—RESEARCH NOT AUTHORIZED

This section makes clear that no moneys authorized to be appropriated under this Act may be used by the Administrator for research. Research authorizations are within the jurisdiction of the Committee on Science and Technology.



