Public Law 95-95
95th Congress

An Act

To amend the Clean Air Act, and for other purposes.

Aug. 7, 1977
[H.R. 6161]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Clean Air Act Amendments of 1977.

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Clean Air Act Amendments of 1977".

42 USC 7401 note.*

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* The Clean Air Act which was formerly classified to 42 USC 1857 *et seq.* has been transferred and is now classified to 42 USC 7401 *et seq.* Marginal citations to the U.S. Code for sections of the Clean Air Act in this slip law are to the new classifications. For former classifications of the Clean Air Act, consult the Tables volume of the U.S. Code.

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TITLE I—AMENDMENTS RELATING PRIMARILY TO TITLE I OF THE CLEAN AIR ACT

TRAINING

Grants.
42 USC 7403.

SEC. 101. (a) Section 103(b) of the Clean Air Act is amended by striking out paragraph (5), redesignating the following paragraphs accordingly, and adding the following at the end thereof: "In carrying out the provisions of subsection (a), the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5). Reasonable fees may be charged for such

Fees.

training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.".

(b) Section 103(a) of such Act is amended by striking out "training," in paragraph (1); by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and by inserting the following paragraph at the end thereof: 42 USC 7403.

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

(c) The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology on the environmental and atmospheric research, development, and demonstration aspects of this Act. In addition, the reports and studies required by this Act that relate to research, development, and demonstration issues shall be transmitted to the Committee on Science and Technology at the same time they are made available to other committees of the Congress. Research, development, and demonstration. Consultation with House committee. Reports and studies, transmittal to congressional committees. 42 USC 7403 note.

WAIVER OF MAINTENANCE OF EFFORT REQUIREMENT

SEC. 102. (a) The third sentence of subsection (b) of section 105 of the Clean Air Act is amended to read as follows: "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds.". Notice and hearing. 42 USC 7405.

(b) Subsection (c) of section 105 of such Act is amended by adding the following at the end thereof: "In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.". State agencies, availability of funds.

AIR QUALITY CONTROL REGIONS

SEC. 103. Section 107 of the Clean Air Act is amended by adding the following new subsections at the end thereof: List, noncomplying regions. 42 USC 7407. *Post*, pp. 746, 731.

"(d)(1) For the purpose of transportation control planning, part D (relating to nonattainment), part C (relating to prevention of significant deterioration of air quality), and for other purposes, each State, within one hundred and twenty days after the date of enactment of the Clean Air Act Amendments of 1977, shall submit to the Administrator a list, together with a summary of the available information, identifying those air quality control regions, or portions

thereof, established pursuant to this section in such State which on the date of enactment of the Clean Air Act Amendments of 1977—

"(A) do not meet a national primary ambient air quality standard for any air pollutant other than sulfur dioxide or particulate matter;

"(B) do not meet, or in the judgment of the State may not in the time period required by an applicable implementation plan attain or maintain, any national primary ambient air quality standard for sulfur dioxide or particulate matter;

"(C) do not meet a national secondary ambient air quality standard;

"(D) cannot be classified under subparagraph (B) or (C) of this paragraph on the basis of available information, for ambient air quality levels for sulfur oxides or particulate matter; or

"(E) have ambient air quality levels better than any national primary or secondary air quality standard other than for sulfur dioxide or particulate matter, or for which there is not sufficient data to be classified under subparagraph (A) or (C) of this paragraph.

List, modification. Notice.

"(2) Not later than sixty days after submittal of the list under paragraph (1) of this subsection the Administrator shall promulgate each such list with such modifications as he deems necessary. Whenever the Administrator proposes to modify a list submitted by a State, he shall notify the State and request all available data relating to such region or portion, and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate.

"(4) Any region or portion thereof which is not classified under subparagraph (B) or (C) of paragraph (1) of this subsection for sulfur dioxide or particulate matter within one hundred and eighty days after enactment of the Clean Air Act Amendments of 1977 shall be deemed to be a region classified under subparagraph (D) of paragraph (1) of this subsection.

Revised lists.

"(5) A State may from time to time review, and as appropriate revise and resubmit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.

Air quality control regions, redesignations.

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

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

Post, p. 705.

"(3) No compliance date extension granted under section 113(d)(5) (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 113(d)(5) if the violation of such limitation is due solely to a redesignation of a region under this subsection."

CRITERIA AND CONTROL TECHNIQUES

SEC. 104. (a) The first sentence of section 108(b)(1) of the Clean Air Act is amended by striking the words "technology and costs of emission control" and inserting in lieu thereof the words "cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology". 42 USC 7408.

(b) Section 108(c) of such Act is amended by adding the following at the end thereof: "Not later than six months after the date of the enactment of the Clean Air Act Amendments of 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.". NO_2 criteria, revision and reissuance.

TRANSPORTATION PLANNING AND GUIDELINES

SEC. 105. Section 108 of the Clean Air Act is amended by adding the following new subsections at the end thereof:

"(e) The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after the enactment of this subsection, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 175 of part D. Such guidelines shall include information on— Federal, State, and local agencies, consultation. Publication. *Post*, p. 746. Contents.

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

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

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

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

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

"(f)(1) The Administrator shall publish and make available to appropriate Federal agencies, States, and air pollution control agencies, including agencies assisted under section 175 within 6 months after enactment of this subsection for clauses (i), (ii), (iii), and (iv) of subparagraph (A) and within one year after the enactment of this subsection for the balance of this subsection (and from time to time thereafter), Information, publication. Availability to Federal and State agencies.

"(A) information, prepared, as appropriate, in cooperation with the Secretary of Transportation, regarding processes, procedures, and methods to reduce or control each such pollutant, including but not limited to—

"(i) motor vehicle emission inspection and maintenance programs;

"(ii) programs to control vapor emissions from fuel transfer and storage operations and operations using solvents;

"(iii) programs for improved public transit;

"(iv) programs to establish exclusive bus and carpool lanes and areawide carpool programs;

"(v) programs to limit portions of road surfaces or certain sections of the metropolitan areas to the use of common carriers, both as to time and place;

"(vi) programs for long-range transit improvements involving new transportation policies and transportation facilities or major changes in existing facilities;

"(vii) programs to control on-street parking;

"(viii) programs to construct new parking facilities and operate existing parking facilities for the purpose of park and ride lots and fringe parking;

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

"(x) provisions for employer participation in programs to encourage carpooling, vanpooling, mass transit, bicycling, and walking;

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

"(xii) programs of staggered hours of work;

"(xiii) programs to institute road user charges, tolls, or differential rates to discourage single occupancy automobile trips;

"(xiv) programs to control extended idling of vehicles;

"(xv) programs to reduce emissions by improvements in traffic flow;

"(xvi) programs for the conversion of fleet vehicles to cleaner engines or fuels, or to otherwise control fleet vehicle operations;

"(xvii) programs for retrofit of emission devices or controls on vehicles and engines, other than light duty vehicles, not subject to regulations under section 202 of title II of this Act; and

Post, pp. 751–753, 758–761, 765, 767, 769, 791.

"(xviii) programs to reduce motor vehicle emissions which are caused by extreme cold start conditions;

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

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

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

Additional information.

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

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

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

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

AIR QUALITY STANDARDS

SEC. 106. (a) Section 109 of the Clean Air Act, as amended by subsection (b) of this section, is amended by adding the following new subsection at the end thereof: 42 USC 7409.

"(d)(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph. Review and revision. *Ante*, p. 689; *Post*, p. 790.

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

"(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 108 and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section.

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

(b) Section 109 of such Act is amended by adding the following new subsection at the end thereof: NO_2 standards, promulgation. *Supra.*

"(c) The Administrator shall, not later than one year after the date of the enactment of the Clean Air Act Amendments of 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 108(c), he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.".

ENERGY OR ECONOMIC EMERGENCY AUTHORITY

SEC. 107. (a) Section 110(f) of the Clean Air Act is amended to read as follows: Energy emergency, Presidential determination. Notice and hearing. Petition. 42 USC 7410.

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

"(A) a temporary suspension of any part of the applicable implementation plan may be necessary, and

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

Energy emergency, plan suspension.

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

Requirements.

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

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

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

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

Suspension period.

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

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

Post, p. 694.

Compliance schedule delay.

"(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119, as in effect before the date of the enactment of this paragraph or section 113(d) of this Act, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.".

Post, pp. 709, 712.

Post, p. 705.

Temporary economic emergency, plan suspension.
42 USC 7410.

(b) Section 110 of such Act is amended by adding the following new subsection at the end thereof:

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

"(A) meets the requirements of this section, and

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

which the Administrator has not approved or disapproved under this section within the required four month period, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B)

may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

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

"(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119 as in effect before the date of the enactment of this paragraph, or under section 113(d) upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.". Compliance schedule delay. *Post*, pp. 709, 712. *Post*, p. 705.

IMPLEMENTATION PLANS

SEC. 108. (a)(1) Section 110(a)(2)(A) of the Clean Air Act is amended by inserting "except as may be provided in subparagraph (I)" after "(A)". Contents. 42 USC 7410.

(2) Section 110(a)(2)(B) of such Act is amended by striking out "land-use and" and by inserting after "transportation controls" the following: ", air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)".

(3) Section 110(a)(2)(D) of such Act is amended by inserting after "(D) it includes" and before "a procedure" the following: "a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii)". *Post*, pp. 731, 746.

(4) Section 110(a)(2)(E) of such Act is amended to read as follows:

"(E) it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 126, relating to interstate pollution abatement;". *Post*, p. 724.

(5) Section 110(a)(2)(F) of such Act is amended by striking out "and" before "(v)" and by inserting the following at the end thereof: "and (vi) requirements that the State comply with the requirements respecting State boards under section 128;" after "such authority;" *Post*, p. 725.

(6)(A) Section 110(a)(2)(H)(ii) of such Act is amended by inserting after "to achieve the national ambient air quality primary or secondary standard which it implements" the following: "or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977".

State implementation plan, contents. 42 USC 7410.

(B) Section 110(a)(2)(H)(ii) of such Act is amended by inserting "except as provided in paragraph (3)(C)," before "whenever".

(b) Section 110(a)(2) of the Clean Air Act is amended by striking out "and" at the end of subparagraph (G), striking out the period at the end of subparagraph (H), and by adding the following new subparagraphs at the end thereof:

Nonattainment area, construction limitation. *Post*, p. 746.

"(I) it provides that after June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area (as defined in section 171(2)) to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of part D (relating to nonattainment areas);

Post, p. 746.

Post, p. 719.

Post, p. 725.

"(J) it meets the requirements of section 121 (relating to consultation), section 127 (relating to public notification), part C (relating to prevention of significant deterioration of air quality and visibility protection), and

Fee.

"(K) it requires the owner or operator of each major stationary source to pay to the permitting authority as a condition of any permit required under this Act a fee sufficient to cover—

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

"(ii) if the owner or operator receives a permit for such source, whether before or after the date of enactment of this subparagraph, the reasonable costs (incurred after such date of enactment) of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action).".

State implementation plan, revision.

(c) Section 110(a)(3) of such Act is amended by adding the following new subparagraph at the end thereof:

"(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 118 (relating to Federal facilities), enforcement orders under section 113(d), suspensions under section 110 (f) or (g) (relating to temporary energy or economic authority) or orders under section 119 (relating to primary nonferrous smelters) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, extension, or variances had been granted.".

Post, p. 711.

Post, p. 705.

Ante, pp. 691, 692.

Post, pp. 709, 712.

Implementation plan, regulations.

(d)(1) Section 110(c)(1) of such Act is amended by adding the following new sentence at the end thereof: "Notwithstanding the preceding sentence, any portion of a plan relating to any measure described in the first sentence of section 121 (relating to consultation) or the consultation process required under such section 121 shall not be required to be promulgated before the date eight months after such date required for submission.".

Post, p. 719.

(2) Section 110(c)(1)(A) of such Act is amended to read as follows:

"(A) the State fails to submit an implementation plan which meets the requirements of this section,".

(3) Section 110(c) of such Act is amended by adding the following new paragraphs at the end thereof:

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

Plan, State implementation and enforcement.

"(4) In the case of any applicable implementation plan containing measures requiring—

"(A) retrofits on other than commercially owned in-use vehicles,

"(B) gas rationing which the Administrator finds would have seriously disruptive and widespread economic or social effects, or

"(C) the reduction of the supply of on-street parking spaces,

the Governor of the State may, after notice and opportunity for public hearing, temporarily suspend such measures notwithstanding the requirements of this section until January 1, 1979, or the date on which a plan revision under section 110(a)(2)(I) is submitted, whichever is earlier. No such suspension shall be granted unless the State agrees to prepare, adopt, and submit such plan revision as determined by the Administrator.

Temporary suspension. Notice and hearing.

Ante, p. 694.

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

Certain bridge tolls, elimination.

"(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after the date of the enactment of this subparagraph, be revised to include comprehensive measures (including the written evidence required by part D), to:

Implementation plan, public transportation measures, revision.

Post, p. 746

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

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

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

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

(e) Section 110(a) of such Act is amended by adding at the end thereof the following new paragraphs:

Indirect source review program.

Ante, p. 693.

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

implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

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

"(iii) Any State may revise an applicable implementation plan approved under section 110(a) to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

Ante, pp. 693-695.

"(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under section 110(c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

Ante, p. 694.

Definitions.

"(C) For purposes of this paragraph, the term 'indirect source' means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

42 USC 7410.

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

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

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

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

"(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 113(d) or section 119 (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.".

Post, p. 705.
Post, pp. 709, 712.

42 USC 7410.

(f) Section 110(d) of such Act is amended by striking out "implements" and all that follows down through the period at the end thereof and inserting in lieu thereof "implements the requirements of this section.".

State documents. Publication in Federal Register.

(g) Section 110 of such Act is amended by adding the following new subsections at the end thereof:

"(g)(1) Not later than one year after the date of enactment of the Clean Air Act Amendments of 1977 and annually thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable imple-

mentation plan for such State and shall publish notice in the Federal Register of the availability of such documents. Each such document shall be revised as frequently as practicable but not less often than annually.

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

"(h) Except for a primary nonferrous smelter order under section 119, a suspension under section 110 (f) or (g) (relating to emergency suspensions), an exemption under section 118 (relating to certain Federal facilities), an order under section 113(d) (relating to compliance orders), a plan promulgation under section 110(c), or a plan revision under section 110(a)(3), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator. Modification of requirements, prohibition. *Post*, pp. 709, 712. *Ante*, pp. 691, 692. *Post*, p. 711. *Post*, p. 705. *Ante*, p. 694.

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

NEW SOURCE STANDARDS OF PERFORMANCE

SEC. 109. (a) Section 111 of the Clean Air Act is amended by adding the following new subsections at the end thereof: Regulations. 42 USC 7411.

"(f)(1) Not later than one year after the date of enactment of this subsection, the Administrator shall promulgate regulations listing under subsection (b)(1)(A) the categories of major stationary sources which are not on the date of the enactment of this subsection included on the list required under subsection (b)(1)(A). The Administrator shall promulgate regulations establishing standards of performance for the percentage of such categories of sources set forth in the following table before the expiration of the corresponding period set forth in such table: *Post*, p. 791.

"Percentage of source categories required to be listed for which standards must be established:	Period by which standards must be promulgated after date list is required to be promulgated:
25	2 years.
75	3 years.
100	4 years.

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

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

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

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

"(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under State officers, consultation.

this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

Regulations, revision. Application, State Governor.

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

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

Post, p. 791.

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

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

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

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

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

Hazardous air pollutants list, revision.

"(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 112, the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

Post, pp. 701, 703, 791.

Stationary sources, standards.

"(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 112 is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.

Application, administrative action.

"(7) Unless later deadlines for action of the Administrator are otherwise prescribed under this section or section 112, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

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

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

Notice and hearing.

"(8) Before taking any action required by subsection (f) or by this

subsection, the Administrator shall provide notice and opportunity for public hearing.

Design or equipment standards.

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

"Not feasible to prescribe or enforce a standard of performance."

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

Alternative emission limitation. Notice and hearing.

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

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

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

Standards of performance. 42 USC 7411.

(b)(1) Section 111(d)(1) of such Act is amended by striking out "emissions standards" in each place it appears and inserting in lieu thereof "standards of performance" and by adding at the end thereof the following new sentence: "Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.".

(2) Section 111(d)(2) of such Act is amended by adding at the end thereof the following new sentence: "In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.".

"Standard of performance."

(c)(1)(A) Section 111(a)(1) of the Clean Air Act, defining standard of performance, is amended to read as follows:

"(1) The term 'standard of performance' means—

"(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) applies, a standard—

Infra.

"(i) establishing allowable emission limitations for such category of sources, and

"(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emissions which would have resulted from the use of fuels which are not subject to treatment prior to combustion,

"(B) with respect to any air pollutant emitted from a category of stationary sources (other than fossil fuel fired sources) to which subsection (b) applies, a standard such as that referred to in subparagraph (A)(i); and

"(C) with respect to any air pollutant emitted from a particular source to which subsection (d) applies, a standard which the State (or the Administrator under the conditions specified in subsection (d)(2)) determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

Ante, p. 699.

For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. For the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.".

"Technological system of continuous emission reduction."

(B) Section 111(a) of such Act is further amended by adding the following new paragraph at the end thereof:

Post, p. 703.

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

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

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

42 USC 7411.

Standards for new sources, revision.

(2) Section 111(b)(1)(B) of such Act is amended by striking out "may, from time to time," in the next to last sentence thereof and by inserting in lieu thereof "shall, at least every four years, review and, if appropriate,".

(3) Section 111(b) of such Act is further amended by inserting at the end thereof the following:

"(5) Except as otherwise authorized under subsection (h), nothing in this section shall be construed to require, or to authorize the Admin-

istrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

"(6) The revised standards of performance required by enactment of subsection (a)(1)(A) (i) and (ii) shall be promulgated not later than one year after enactment of this paragraph. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.". Revised standards, enactment date. *Ante*, p. 699.

(d)(1) The second sentence of section 111(c)(1) is amended by striking out "(except with respect to new sources owned or operated by the United States)". 42 USC 7411.

(2) The second sentence of section 112(d)(1) is amended by striking out "(except with respect to stationary sources owned or operated by the United States)". 42 USC 7412.

(3) The second sentence of section 114(b)(1) is amended by striking out "(except with respect to new sources owned or operated by the United States)". 42 USC 7414.

(e) Section 111 of such Act is amended by adding the following new subsections at the end thereof: Permit conditions. *Ante*, p. 697.

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

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

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

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

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

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

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk

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

Ante, p. 700; *Post*, p. 791.

Tests.

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

Waiver terms and conditions.

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

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

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 113.

Post, pp. 704, 705.

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

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

Termination date.

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

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

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

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

and that such failure cannot be corrected.

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

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

"(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

"(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

"(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an

Requirements extension.

extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under subsection (b) of this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

Ante, p. 700; *Post*, p. 791.

"(8) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 113.".

Emission limits. Compliance schedule. 42 USC 7413.

(f) Section 111(a) of such Act is amended by adding the following new paragraph at the end thereof:

Post, pp. 704, 705. *Ante*, p. 700.

"(7) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, or (B) which qualifies under section 113(d)(5)(A)(ii) of this Act, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.".

15 USC 792.

Post, p. 705.

EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

SEC. 110. Section 112 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

Design or equipment standards. 42 USC 7412.

"(e)(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in his judgment is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

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

"Not feasible to prescribe or enforce an emission standard."

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

Alternative emission limitation. Notice and hearing.

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

ENFORCEMENT PROVISIONS

Administrative order.
42 USC 7413.

SEC. 111. (a) Section 113(a) of the Clean Air Act is amended by inserting the following new paragraph at the end thereof:

"(5) Whenever, on the basis of information available to him, the Administrator finds that a State is not acting in compliance with any requirement of the regulation referred to in section 129(a)(1) of the Clean Air Act Amendments of 1977 (relating to certain interpretative regulations) or any plan provisions required under section 110 (a)(2)(I) and part D, he may issue an order prohibiting the construction or modification of any major stationary source in any area to which such provisions apply or he may bring a civil action under subsection (b)(5).".

Post, p. 745.

Ante, p. 694.

Post, p. 746.

Infra.

(b)(1) So much of section 113(b) of such Act as precedes paragraph (1) thereof is amended to read as follows:

"(b) The Administrator shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person—".

(2) Section 113(b) of such Act is amended by inserting the following after the first sentence thereof: "The Administrator may commence a civil action for recovery of any noncompliance penalty under section 120 or for recovery of any nonpayment penalty for which any person is liable under section 120 or for both.".

Post, p. 714.

Penalty.

(b) Section 113(b) of such Act is amended by striking out the penultimate sentence thereof and substituting: "Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant resides or has his principal place of business, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any noncompliance penalty (and nonpayment penalty) owed under section 120. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business, and the seriousness of the violation.".

Costs.

(3) Section 113(b) of such Act is amended by adding the following at the end thereof: "In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought in any case where the court finds that such action was unreasonable.".

(c)(1) Section 113(b)(3) of such Act is amended by striking out "or section 119(g)" and inserting in lieu thereof "section 119(g) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), subsection (d)(5) (relating to coal conversion) section 320 (relating to cost of certain vapor recovery), section 119 (relating to smelter orders) or any regulation under part B (relating to ozone)".

Post, pp. 709, 712.

Post, p. 782.

(2) Section 113(b)(4) of such Act is amended by inserting "or subsection (d) of this section" after "114".

(3) Section 113(b) of such Act is amended by striking out "or" at the end of paragraph (3), striking out the period at the end of paragraph (4) and substituting "; or", and inserting the following new paragraph at the end thereof:

"(5) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a) (5) has been made.".

(d)(1) Section 113(c)(1)(B) of such Act is amended to read as follows: Penalties. 42 USC 7413.

"(B) violates or fails or refuses to comply with any order under section 119 or under subsection (a) or (d) of this section, or"; *Post*, pp. 709, 712.

(2) Section 113(c)(1) of such Act is amended by striking out "or" at the end of subparagraph (B), by striking out "section 112(c), or section 119(g)" and inserting in lieu thereof: "section 112(c), or *Supra.*

"(D) violates any requirement of section 119(g) (as in effect before the date of the enactment of this Act) subsection (b)(7) or (d)(5) of section 120 (relating to noncompliance penalties) or any requirement of part B (relating to ozone)". *Post*, p. 714. *Post*, p. 726.

(3) Section 113(c) of such Act is amended by adding the following new paragraph at the end thereof: "Person." *Supra.*

"(3) For the purpose of this subsection, the term 'person' includes, in addition to the entities referred to in section 302(e), any responsible corporate officer.". *Post*, p. 770.

COMPLIANCE ORDERS (INCLUDING COAL CONVERSION)

SEC. 112. (a) Section 113 of the Clean Air Act is amended by adding the following new subsection: *Ante*, p. 704.

"(d)(1) A State (or, after thirty days notice to the State, the Administrator) may issue an order for any stationary source which specifies a date for final compliance with any requirement of an applicable implementation plan later than the date for attainment of any national ambient air quality standard specified in such plan if—

"(A) such order is issued after notice to the public (and, as appropriate, to the Administrator) containing the content of the proposed order and opportunity for public hearing; Public notice and hearing.

"(B) the order contains a schedule and timetable for compliance;

"(C) the order requires compliance with applicable interim requirements as provided in paragraph (5)(B) (relating to sources converting to coal), and paragraph (6) and (7) (relating to all sources receiving such orders) and requires the emission monitoring and reporting by the source authorized to be required under sections 110(a)(2)(F) and 114(a)(1); *Ante*, p. 693.

"(D) the order provides for final compliance with the requirement of the applicable implementation plan as expeditiously as practicable, but (except as provided in paragrah (4) or (5)) in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such plan, whichever is later; and *Post*, p. 776

"(E) in the case of a major stationary source, the order notifies the source that it will be required to pay a noncompliance penalty under section 120 or by such later date as is set forth in the order in accordance with section 120 in the event such source fails to achieve final compliance by July 1, 1979. Noncompliance penalty.

"(2) In the case of any major stationary source, no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this Act. In the case of any source other than a major stationary source, such order issued by the State shall cease to be effective upon a deter-

mination by the Administrator that it was not issued in accordance with the requirements of this Act. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with subsection (a) or an order under this subsection. Nothing in this section shall be construed as limiting the authority of a State or political subdivision to adopt and enforce a more stringent emission limitation or more expeditious schedule or timetable for compliance than that contained in an order by the Administrator.

"(3) If any source not in compliance with any requirement of an applicable implementation plan gives written notification to the State (or the Administrator) that such source intends to comply by means of replacement of the facility, a complete change in production process, or a termination of operation, the State (or the Administrator) may issue an order under paragraph (1) of this subsection permitting the source to operate until July 1, 1979, without any interim schedule of compliance: *Provided*, That as a condition of the issuance of any such order, the owner or operator of such source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such source by reason of the failure to comply. If a source for which the bond or other surety required by this paragraph has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety and the State (or the Administrator) shall have no discretion to modify the order under this paragraph or to compromise the bond or other surety.

Bond.

"(4) An order under paragraph (1) of this subsection may be issued to an existing stationary source if—

"(A) the source will expeditiously use new means of emission limitation which the Administrator determines is likely to be adequately demonstrated (within the meaning of section 111(a)(1) upon expiration of the order,

"(B) such new means of emission limitation is not likely to be used by such source unless an order is granted under this subsection.

"(C) such new means of emission limitation is determined by the Administrator to have a substantial likelihood of—

"(i) achieving greater continuous emission reduction than the means of emission limitation which, but for such order, would be required; or

"(ii) achieving an equivalent continuous reduction at lower cost in terms of energy, economic, or nonair quality environmental impact; and

"(D) compliance by the source with the requirement of the applicable implementation plan would be impracticable prior to, or during, the installation of such new means.

Emission limitation.

Ante, p. 699.

Such an order shall provide for final compliance with the requirement in the applicable implementation plan as expeditiously as practicable, but in no event later than five years after the date on which the source would otherwise be required to be in full compliance with the requirement.

"(5)(A) In the case of a major stationary source which is burning petroleum products or natural gas, or both and which—

"(i) is prohibited from doing so under an order pursuant to the provisions of section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or

15 USC 792.

any subsequent enactment which supersedes such provisions, or

"(ii) within one year after enactment of the Clean Air Act Amendments of 1977 gives notice of intent to convert to coal as its primary energy source because of actual or anticipated curtailment of natural gas supplies under any curtailment plan or schedule approved by the Federal Power Commission (or, in the case of intrastate natural gas supplies, approved by the appropriate State regulatory commission),

and which thereby would no longer be in compliance with any requirement under an applicable implementation plan, an order may be issued by the Administrator under paragraph (1) of this subsection for such source which specifies a date for final compliance with such requirement as expeditiously as practicable, but not later than December 31, 1980. The Administrator may issue an additional order under paragraph (1) of this subsection for such source providing an additional period of such source to come into compliance with the requirement in the applicable implementation plan, which shall be as expeditiously as practicable, but in no event later than five years after the date required for compliance under the preceding sentence.

"(B) In issuing an order pursuant to subparagraph (A), the Administrator shall prescribe (and may from time to time modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions for each source to which such an order applies. Such limitations, requirements, and measures shall be those which the Administrator determines must be complied with by the source in order to assure (throughout the period before the date for final compliance established in the order) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

"(C) The Administrator may, by regulation, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out this paragraph shall provide such systems to users thereof, if he finds, after consultation with the States, that priorities must be imposed in order to assure that such systems are first provided to sources subject to orders under this paragraph in air quality control regions in which national primary ambient air quality standards have not been achieved. No regulation under this subparagraph may impair the obligation of any contract entered into before the date of enactment of the Clean Air Act Amendments of 1977. Priorities.

"(D) No order issued to a source under this paragraph with respect to an air pollutant shall be effective if the national primary ambient air quality standard with respect to such pollutant is being exceeded at any time in the air quality control region in which such source is located. The preceding sentence shall not apply to a source if, upon submission by any person of evidence satisfactory to the Administrator, the Administrator determines (after notice and public hearing)—

"(i) that emissions of such air pollutant from such source will affect only infrequently the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time;

"(ii) that emissions of such air pollutant from such source will have only insignificant effect on the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time; and

"(iii) with reasonable statistical assurance that emissions of such air pollutant from such source will not cause or contribute

to air quality concentrations of such pollutant in excess of the national primary ambient air quality standard for such pollutant.

"(6) An order issued to a source under this subsection shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable.

"(7) A source to which an order is issued under paragraph (1), (3), (4), or (5) of this subsection shall use the best practicable system or systems of emission reduction (as determined by the Administrator taking into account the requirement with which the source must ultimately comply) for the period during which such order is in effect and shall comply with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include—

Interim requirements.

"(A) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

"(B) a requirement that the source comply with the requirements of the applicable implementation plan during any such period insofar as such source is able to do so (as determined by the Administrator).

Termination of order.

"(8) Any order under paragraph (1) or (3) of this subsection shall be terminated if the Administrator determines on the record, after notice and hearing, that the inability of the source to comply no longer exists. If the owner or operator of the source to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under this subsection.

Violations.

"(9) If the Administrator determines that a source to which an order is issued under this subsection is in violation of any requirement of this subsection, he shall—

"(A) enforce such requirement under subsections (a), (b), or (c) of this section,

"(B) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

"(C) give notice of noncompliance and commence action under section 120, or

Post, p. 714.

"(D) take any appropriate combination of such actions.

"(10) During the period of the order issued under this subsection and where the owner or operator is in compliance with the terms of such order, no other enforcement action pursuant to this section or section 304 of this Act shall be pursued against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the source covered by such order.

Post, pp.771, 772.

Ante, pp. 691-696; *Post*, pp. 772, 776, 777.

"(11) For the purposes of sections 110, 304, and 307 of this Act, any order issued by the State (and approved by the Administrator) pursuant to this subsection shall become part of the applicable implementation plan.

"(12) Any enforcement order issued under subsection (a) of this section or any consent decree in an enforcement action which is in effect on the day of enactment of the Clean Air Act Amendments of 1977 shall remain in effect to the extent that such order or consent decree is (A) not inconsistent with the requirements of this subsection and section 119 or (B) the administrative orders on consent issued by the

Post, pp. 709, 710.

Administrator on November 5, 1975 and February 26, 1976 and requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 111. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond July 1, 1979, except such administrative orders on consent, is void unless modified under this subsection within one year after the enactment of the Clean Air Act Amendments of 1977 to comply with the requirements of this subsection.".

Ante, pp. 697, 699-701, 703; *Post*, p. 791.

(b)(1) Section 119 of such Act is hereby repealed. All references to such section 119 or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319) or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be given only when the Governor of the State in which is located the source to which the proposed order under section 113(d)(5) of the Clean Air Act is to be issued gives his prior written concurrence.

Repeal.
Post, p. 712.
42 USC 1857c-10.
15 USC 792 note.
15 USC 792.
Ante, p. 705.

(2) In the case of any major stationary source to which any requirement is applicable under section 113(d)(5)(B) of the Clean Air Act and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such source will be able to comply with all such requirements. In the case of any plant or installation which the Administrator of the Environmental Protection Agency determines (after consultation with the State) will not be subject to an order under section 113(d) of the Clean Air Act and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, or under this subsection may be provided in an order under section 113(d) of the Clean Air Act.

NOTICE TO STATE IN CASE OF CERTAIN INSPECTIONS, ETC.

SEC. 113. Section 114 of the Clean Air Act is amended by adding at the end thereof the following new subsection:

42 USC 7414.

"(d)(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 113(d), before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) with respect to such standard, limitation,

or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 110(c).

Ante, p. 694.

"(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

INTERNATIONAL AIR POLLUTION

42 USC 7415.

SEC. 114. Section 115 of the Clean Air Act is amended to read as follows:

"INTERNATIONAL AIR POLLUTION

"SEC. 115. (a) Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

Plan revision.

"(b) The notice of the Administrator shall be deemed to be a finding under section 110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a). Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

Ante, pp. 693, 694.

"(c) This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

"(d) Recommendations issued following any abatement conference conducted prior to the enactment of the Clean Air Act Amendments of 1977 shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 109 of this Act unless the Administrator, after consultation

Ante, p. 691.

with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.".

PRESIDENT'S AIR QUALITY ADVISORY BOARD

SEC. 115. Section 117 of the Clean Air Act is amended— 42 USC 7417.

(1) to strike subsections (a) through (c);

(2) to renumber subsections (d) and (e) as subsections (a) and (b), respectively; and

(3) to amend redesignated subsection (b)—

(A) by striking the words "the Board and" the first time the word "Board" appears and inserting in lieu thereof the word "any"; and

(B) by striking the words "of the Board" the second time the word "Board" appears.

CONTROL OF POLLUTION FROM FEDERAL FACILITIES

SEC. 116. (a) Section 118 of the Clean Air Act, relating to control of pollution from Federal facilities, is amended— 42 USC 7418.

(1) by inserting "(a)" after "118", and

(2) by striking out "shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements" and inserting in lieu thereof "and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.".

(b) Section 118 of such Act is amended by striking out "The President may exempt" and inserting in lieu thereof:

"(b) The President may exempt".

(c) Section 118(b) of such Act, as amended by subsection (b) of this Act, is amended by inserting the following immediately before the last sentence thereof: "In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.". Exemption. Regulations.

PRIMARY NONFERROUS SMELTER ORDERS

42 USC 7401.

SEC. 117. (a) Title I of the Clean Air Act is amended by inserting immediately before section 101 the following: "PART A—AIR QUALITY AND EMISSION LIMITATIONS".

(b) Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"PRIMARY NONFERROUS SMELTER ORDERS

Ante, p. 709.
42 USC 7419.

"SEC. 119. (a)(1) Upon application by the owner or operator of a primary nonferrous smelter, a primary nonferrous smelter order under subsection (b) may be issued—

"(A) by the Administrator, after thirty days' notice to the State, or

"(B) by the State in which such source is located, but no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this Act.

Not later than ninety days after submission by the State to the Administrator of notice of the issuance of a primary nonferrous smelter order under this section, the Administrator shall determine whether or not such order has been issued by the State in accordance with the requirements of this Act. If the Administrator determines that such order has not been issued in accordance with such requirements, he shall conduct a hearing respecting the reasonably available control technology for primary nonferrous smelters.

Hearing.

"(2)(A) An order issued under this section to a primary nonferrous smelter shall be referred to as a 'primary nonferrous smelter order'. No primary nonferrous smelter may receive both an enforcement order under section 113(d) and a primary nonferrous smelter order under this section.

Ante, p. 705.

Statement.

"(B) Before any hearing conducted under this section, in the case of an application made by the owner or operator of a primary nonferrous smelter for a second order under this section, the applicant shall furnish the Administrator (or the State as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). The statement of the grounds for the proposed order shall be provided by the Administrator or the State in any case in which such State or Administrator is acting on its own initiative. Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of such hearing. No primary nonferrous smelter order may be granted unless the applicant establishes that he meets the conditions required for the issuance of such order (or the Administrator or State establishes the meeting of such conditions when acting on their own initiative).

Findings.

"(C) Any decision with respect to the issuance of a primary nonferrous smelter order shall be accompanied by a concise statement of the findings and of the basis of such findings.

"(b) A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

"(1) such smelter is in existence on the date of the enactment of this section;

"(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation

or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

"(3) such smelter is unable to comply with such requirement by the applicable date for compliance because no means of emission limitation applicable to such smelter which will enable it to achieve compliance with such requirement has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, non-air quality health and environmental impact, and energy consideration).

Orders.

"(c)(1) A second order issued to a smelter under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. The increments of progress shall be limited to requiring compliance with subsection (d) and, in the case of a second order, to procuring, installing, and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator determines such means have been adequately demonstrated to be reasonably available within the meaning of subsection (b)(3).

"(2) Not in excess of two primary nonferrous smelter orders may be issued under this section to any primary nonferrous smelter. The first such order issued to a smelter shall not result in the postponement of the requirement with respect to which such order is issued beyond January 1, 1983. The second such order shall not result in the postponement of such requirement beyond January 1, 1988.

Interim measures.

"(d)(1)(A) Each primary nonferrous smelter to which an order is issued under this section shall be required to use such interim measures for the period during which such order is in effect as may be necessary in the judgment of the Administrator to assure attainment and maintenance of the national primary and secondary ambient air quality standards during such period, taking into account the aggregate effect on air quality of such order together with all variances, extensions, waivers, enforcement orders, delayed compliance orders and primary nonferrous smelter orders previously issued under this Act.

"(B) Such interim requirements shall include—

"(i) a requirement that the source to which the order applies comply with such reporting requirements and conduct such monitoring as the Administrator determines may be necessary, and

"(ii) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons.

Agreement.

"(C) Such interim measures shall also, except as provided in paragraph (2), include continuous emission reduction technology. The Administrator shall condition the use of any such interim measures upon the agreement of the owner or operator of the smelter—

"(i) to comply with such conditions as the Administrator determines are necessary to maximize the reliability and enforceability of such interim measures, as applied to the smelter, in attaining and maintaining the national ambient air quality standards to which the order relates, and

"(ii) to commit reasonable resources to research and development of appropriate emission control technology.

Waiver. Notice and hearing.

"(2) The requirement of paragraph (1) for the use of continuous

emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5 of the United States Code. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

Information, availability to public.

"(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 319.

Investigation.

Post, p. 781.

"(4) In the case of any smelter which on the date of enactment of this section uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

Notice and hearing.

"(e) At any time during which such order applies, the Administrator may enter upon a public hearing respecting the availability of technology. Any order under this section shall be terminated if the Administrator determines on the record, after notice and public hearing, that the conditions upon which the order was based no longer exist. If the owner or operator of the smelter to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under subsection (c).

Hearing.

Termination, notice and hearing.

"(f) If the Administrator determines that a smelter to which an order is issued under this section is in violation of any requirement of subsection (c) or (d), he shall—

Ante, pp. 704, 705.

"(1) enforce such requirement under section 113,

"(2) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

"(3) give notice of noncompliance and commence action under section 120, or

Infra.

"(4) take any appropriate combination of such actions.".

NONCOMPLIANCE PENALTY

SEC. 118. Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"NONCOMPLIANCE PENALTY

"SEC. 120. (a)(1)(A) Not later than 6 months after the date of enactment of this section, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A). Notice and hearing. Regulations. 42 USC 7420.

"(B)(i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section. State plans. Delegation of authority.

"(ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b)(2)(B).

"(2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates—

"(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 119) which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan, or

"(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 111 or 112 of this Act, or *Ante*, pp. 697, 699-701, 703; *Post*, p. 791;

"(iii) any source referred to in clause (i) or (ii) (for which an extension, order, or suspension referred to in subparagraph (B) is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 119 which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, or suspension. *Ante*, pp. 701, 703; *Post*, p. 791. *Ante*, pp. 709, 712.

For purposes of subsection (d)(2), in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

"(B) Notwithstanding the requirements of subparagraph (A) (i) and (ii), the owner or operator of any source shall be exempted from the duty to pay a noncompliance penalty under such requirements with respect to that source if, in accordance with the procedures in subsection (b)(5), the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to— Exemption.

"(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 119;

"(ii) in the case of a coal-burning source granted an extension under the second sentence of section 119(c)(1), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or under any legislation which amends or supersedes such provisions; 15 USC 792.

"(iii) the use of innovative technology sanctioned by an enforcement order under section 113(d)(4); *Ante*, p. 705.

"(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 113(d) (or an order under section 113 issued before the date of enactment of this section) which has the effect of permitting a delay or violation of any requirement of this Act (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

Ante, p. 705.

"(v) the conditions by reason of which a temporary emergency suspension is authorized under section 110 (f) or (g).

Ante, pp. 691, 692.

An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

Notice and hearing.

"(C) The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

Regulations.

"(b) Regulations under subsection (a) shall—

"(1) permit the assessment and collection of such penalty by the State if the State has a delegation of authority in effect under subsection (a)(1)(B)(i);

"(2) provide for the assessment and collection of such penalty by the Administrator, if—

"(A) the State does not have a delegation of authority in effect under subsection (e), or

"(B) the State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

Notice.

"(3) require the States, or in the event the States fail to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person referred to in subsection (a)(2)(A) with respect to each source owned or operated by such person which is not in compliance as provided in such subsection, not later than July 1, 1979, or thirty days after the discovery of such noncompliance, whichever is later;

"(4) require each person to whom notice is given under paragraph (3) to—

Penalty, calculation.

"(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments (determined in accordance with subsection (d)(3)) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator, or

Petition.

"(B) submit a petition, within forty-five days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (a)(2)(B) with respect to a particular source;

Hearing.

"(5) require the Administrator to provide a hearing on the

record (within the meaning of subchapter II of chapter 5 of title 5, United States Code) and to make a decision on such petition (including findings of fact and conclusions of law) not later than ninety days after the receipt of any petition under paragraph (4)(B), unless the State agrees to provide a hearing which is substantially similar to such a hearing on the record and to make a decision on such petition (including such findings and conclusions) within such ninety-day period; 5 USC 551.

"(6)(A) authorize the Administrator on his own initiative to review the decision of the State under paragraph (5) and disapprove it if it is not in accordance with the requirements of this section, and (B) require the Administrator to do so not later than sixty days after receipt of a petition under this subparagraph, notice, and public hearing and a showing by such petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section; Review. Notice and hearing.

"(7) require payment, in accordance with subsection (d), of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which such notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to such source; Payment.

"(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (6), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and Adjustment.

"(9) require a final adjustment of the penalty within 180 days after such source comes into compliance in accordance with subsection (d)(4).

A delayed compliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of publication of the proposed penalty under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute delayed compliance penalty applicable to such facility. Delayed penalty, objection. Substitution.

"(c) If the owner or operator of any stationary source to whom a notice is issued under subsection (b)(3)— Contract.

"(1) does not submit a timely petition under subsection (b)(4)(B), or

"(2) submits a petition under subsection (b)(4)(B) which is denied, and

fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the State (or the Administrator, as the case may be) may enter into a contract with any person who has no financial interest in the owner or operator of the source (or in any person controlling, controlled by or under common control with such source) to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

Payment.

"(d)(1) All penalties assessed by the Administrator under this section shall be paid to the United States Treasury. All penalties assessed by the State under this section shall be paid to such State.

"(2) The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—

"(A) the amount determined in accordance with regulations promulgated by the Administrator under subsection (a), which is no less than the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which a delay in compliance beyond July 1, 1979, may have for the owner or operator of such source, minus

"(B) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into, and maintaining compliance with, such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subparagraph (A).

To the extent that any expenditure under subparagraph (B) made during any quarter is not subtracted for such quarter from the costs under subparagraph (A), such expenditure may be subtracted for any subsequent quarter from such costs. In no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

Quarterly payments.

"(3)(A) The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any adjustment or any subtraction under paragraph (2)(B)) after the first payment shall be equal.

"(B) The first payment shall be due on the date six months after the date of issuance of the notice of noncompliance under subsection (b)(3) with respect to any source or on January 1, 1980, whichever is later. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

"Period of covered noncompliance."

"(C) For the purpose of this section, the term 'period of covered noncompliance' means the period which begins—

"(i) two years after the date of enactment of this section, in the case of a source for which notice of noncompliance under subsection (b)(3) is issued on or before the date two years after such date of enactment, or

"(ii) on the date of issuance of the notice of noncompliance under subsection (b)(3), in the case of a source for which such notice is issued after July 1, 1979,

and ending on the date on which such source comes into (or for the purpose of establishing the schedule of payments, is estimated to come into) compliance with such requirement.

Review.

"(4) Upon making a determination that a source with respect to which a penalty has been paid under this section is in compliance and is maintaining compliance with the applicable requirement, the State (or the Administrator as the case may be) shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance, and shall within 180 days after such source comes into compliance—

"(A) provide reimbursement with interest (to be paid by the State or Secretary of the Treasury, as the case may be) at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any overpayment by such person, or

"(B) assess and collect an additional payment with interest at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any underpayment by such person.

"(5) Any person who fails to pay the amount of any penalty with respect to any source under this section on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter. Quarterly nonpayment penalty.

"(e) Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b) shall be considered a final action for purposes of judicial review of any penalty under section 307 of this Act. *Post*, pp. 772, 776, 777.

"(f) Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Act, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this Act or State or local law.

"(g) In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this Act after the enactment of the Clean Air Act Amendments of 1977 which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before enactment of the Clean Air Act Amendments of 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.".

CONSULTATION

SEC. 119. Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"CONSULTATION

"SEC. 121. In carrying out the requirements of this Act requiring applicable implementation plans to contain— 42 USC 7421.

"(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

"(2) any measure referred to—

"(A) in part D (pertaining to nonattainment requirements), or *Post*, p. 746.

"(B) in part C (pertaining to prevention of significant deterioration), *Post*, p. 731.

and in carrying out the requirements of section 113(d) (relating to certain enforcement orders), the State shall provide a satisfactory process *Ante*, p. 705.

of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after the date of enactment of the Clean Air Act Amendments of 1977 as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after the date of enactment of the Clean Air Act Amendments of 1977. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.".

Regulations; notice and hearing.

Petition for judicial review.

UNREGULATED POLLUTANTS

SEC. 120. (a) Part A of title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"LISTING OF CERTAIN UNREGULATED POLLUTANTS

Review; notice and hearing. 42 USC 7422.

"SEC. 122. (a) Not later than one year after date of enactment of this section (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 108(a)(1) or 112(b)(1)(A) (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 111(b)(1)(A), or take any combination of such actions.

Post, p. 790. 42 USC 7412.

Post, p. 791.

Revision authority.

"(b) Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).

Consultation with NRC.

"(c)(1) Before listing any source material, special nuclear, or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

Interagency agreement.

"(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this Act, minimize duplication of effort

and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this Act respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

"(3) In case of any standard or emission limitation promulgated by the Administrator, under this Act or by any State (or the Administrator) under any applicable implementation plan under this Act, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.". Notice and hearing.

(b) The Administrator of the Environmental Protection Agency shall conduct a study, in conjunction with other appropriate agencies, concerning the effect on the public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air. Such study shall include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, cadmium, arsenic, and polycyclic organic matter. Study by EPA. 42 USC 7422 note.

STACK HEIGHTS

SEC. 121. Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"STACK HEIGHTS

"SEC. 123. (a) The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this title shall not be affected in any manner by— 42 USC 7423.

"(1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or

"(2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before the date of enactment of the Clean Air Amendments of 1970 or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric generating units which are subject to the provisions of section 118 and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account. 42 USC 7401 note. *Ante*, p. 711.

"(b) For the purpose of this section, the term 'dispersion technique' includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions. "Dispersion technique."

"(c) Not later than six months after the date of enactment of this section, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section. For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, Regulations. Notice and hearing. Good engineering practice.

nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.".

ASSURANCE OF PLAN ADEQUACY

SEC. 122. Part A of title I of the Clean Air Act is amended by adding the following new sections at the end thereof:

"ASSURANCE OF ADEQUACY OF STATE PLANS

Review.
42 USC 7424.

"SEC. 124. (a) As expeditiously as practicable but not later than one year after date of enactment of this section, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

"(1) the extent to which compliance with requirements of such plan is dependent upon the use by major fuel burning stationary sources of petroleum products or natural gas,

"(2) the extent to which such plan may reasonably be anticipated to be inadequate to meet the requirements of this Act in such State on a reliable and long-term basis by reason of its dependence upon the use of such fuels, and

"(3) the extent to which compliance with the requirements of such plan is dependent upon use of coal or coal derivatives which is not locally or regionally available.

Each State shall submit the results of its review and its determination under this paragraph to the Administrator promptly upon completion thereof.

Plan revision.

"(b)(1) Not later than eighteen months after the date of enactment of this section, the Administrator shall review the submissions of the States under subsection (a) and shall require each State to revise its plan if, in the judgment of the Administrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this Act in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

"(2) Before requiring a plan revision under this subsection, with respect to any State the Administrator shall take into account the report of the review conducted by such State under paragraph (1) and shall consult with the Governor of the State respecting such required revision.

"MEASURES TO PREVENT ECONOMIC DISRUPTION OR UNEMPLOYMENT

Notice and hearing.
42 USC 7425.

"SEC. 125. (a) After notice and opportunity for a public hearing—

"(1) the Governor of any State in which a major fuel burning stationary source referred to in this subsection (or class or category thereof) is located,

"(2) the Administrator, or

"(3) the President (or his designee),

may determine that action under subsection (b) is necessary to prevent

or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

"(A) coal or coal derivatives other than locally or regionally available coal,

"(B) petroleum products,

"(C) natural gas, or

"(D) any combination of fuels referred to in subparagraphs (A) through (C),

to comply with the requirements of a State implementation plan.

"(b) Upon a determination under subsection (a)—

"(1) such Governor, with the written consent of the President or his designee,

"(2) the President's designee with the written consent of such Governor, or

"(3) the President

may by rule or order prohibit any such major fuel burning stationary source (or class or category thereof) from using fuels other than locally or regionally available coal or coal derivatives to comply with implementation plan requirements. In taking any action under this subsection, the Governor, the President, or the President's designee as the case may be, shall take into account, the final cost to the consumer of such an action. Consumer costs, consideration.

"(c) The Governor, in the case of action under subsection (b)(1), or the Administrator, in the case of an action under subsection (b)(2) or (3) shall, by rule or order, require each source to which such action applies to—

"(1) enter into long-term contracts of at least ten years in duration (except as the President or his designee may otherwise permit or require by rule or order for good cause) for supplies of regionally available coal or coal derivatives,

"(2) enter into contracts to acquire any additional means of emission limitation which the Administrator or the State determines may be necessary to comply with the requirements of this Act while using such coal or coal derivatives as fuel, and

"(3) comply with such schedules (including increments of progress), timetables and other requirements as may be necessary to assure compliance with the requirements of this Act.

Requirements under this subsection shall be established simultaneously with, and as a condition of, any action under subsection (b).

"(d) This section applies only to existing or new major fuel burning stationary sources— Applicability.

"(1) which have the design capacity to produce 250,000,000 Btu's per hour (or its equivalent), as determined by the Administrator, and

"(2) which are not in compliance with the requirements of an applicable implementation plan or which are prohibited from burning oil or natural gas, or both, under any other authority of law.

"(e) Except as may otherwise be provided by rule by the State or the Administrator for good cause, any action required to be taken by a major fuel burning stationary source under this section shall not be deemed to constitute a modification for purposes of section 111(a)(2) and (4) of this Act. 42 USC 7411.

"(f) For purposes of sections 113 and 120 a prohibition under subsection (b), and a corresponding rule or order under subsection (c), shall be treated as a requirement of section 113. For purposes of any *Ante*, pp. 704, 705. *Ante*, p. 714.

Ante, p. 694.

plan (or portion thereof) promulgated under section 110(c), any rule or order under subsection (c) corresponding to a prohibition under subsection (b), shall be treated as a part of such plan. For purposes of section 113, a prohibition under subsection (b), applicable to any source, and a corresponding rule or order under subsection (c), shall be treated as part of the applicable implementation plan for the State in which subject source is located.

Ante, pp. 704, 705.

Authority delegation.

"(g) The President may delegate his authority under this section to an officer or employee of the United States designated by him on a case-by-case basis or in any other manner he deems suitable.

"Locally or regionally available coal or coal derivatives."

"(h) For the purpose of this section the term 'locally or regionally available coal or coal derivatives' means coal or coal derivatives which is, or can in the judgment of the State or the Administrator feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which the major fuel burning stationary source is located.".

INTERSTATE POLLUTION ABATEMENT

SEC. 123. Part A of title I of the Clean Air Act is amended by adding at the end thereof the following new section:

"INTERSTATE POLLUTION ABATEMENT

42 USC 7426.

"SEC. 126. (a) Each applicable implementation plan shall—

"(1) require each major proposed new (or modified) source—

Post, p. 731.

"(A) subject to part C, relating to significant deterioration of air quality, or

"(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification),

to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

"(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after the date of enactment of the Clean Air Act Amendments of 1977.

Petition.

"(b) Any State or political subdivision may petition the Administrator for a finding that any major source emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E)(i).

Ante, p. 693.

Hearing.

Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

"(c) Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of the applicable implementation plan in such State—

"(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of the prohibition of section 110(a)(2)(E)(i), or

"(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 110(a)(2)(E)(i) as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 113(d) after the expiration of such period during which the Administrator has permitted continuous operation.". *Ante*, p. 693. *Ante*, p. 705.

PUBLIC NOTIFICATION

SEC. 124. Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"SEC. 127. (a) Each State plan shall contain measures which will be effective to notify the public during any calendar on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information. 42 USC 7427.

"(b) The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a).". Grants.

STATE BOARDS

SEC. 125. Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

"STATE BOARDS

"SEC. 128. (a) Not later than the date one year after the date of the enactment of this section, each applicable implementation plan shall contain requirements that— Conflict of interest. 42 USC 7428.

"(1) any board or body which approves permits or enforcement orders under this Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Act, and

"(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.".

OZONE PROTECTION

SEC. 126. Title I of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART B—OZONE PROTECTION

"PURPOSES

42 USC 7450. "SEC. 150. The purposes of this part are (1) to provide for a better understanding of the effects of human actions on the stratosphere, especially the ozone in the stratosphere, (2) to provide for a better understanding of the effects of changes in the stratosphere, especially the ozone in the stratosphere on the public health and welfare, (3) to provide information on the progress of regulation of activities which may reasonably be anticipated to affect the ozone in the stratosphere in such a way as to cause or contribute to endangerment of the public health or welfare, and (4) to provide information on the need for additional legislation in this area, if any.

"FINDINGS AND DEFINITIONS

42 USC 7451. "SEC. 151. (a) The Congress finds, on the basis of presently available information, that—

"(1) halocarbon compounds introduced into the environment potentially threaten to reduce the concentration of ozone in the stratosphere;

"(2) ozone reduction will lead to increased incidence of solar ultraviolet radiation at the surface of the Earth;

"(3) increased incidence of solar ultraviolet radiation is likely to cause increased rates of disease in humans (including increased rates of skin cancer), threaten food crops, and otherwise damage the natural environment;

"(4) other substances, practices, processes, and activities may affect the ozone in the stratosphere, and should be investigated to give early warning of any potential problem and to develop the basis for possible future regulatory action; and

"(5) there is some authority under existing law, to regulate certain substances, practices, processes, and activities which may affect the ozone in the stratosphere.

"DEFINITIONS

42 USC 7452. "SEC. 152. For the purposes of this subtitle—

"(1) the term 'halocarbon' means the chemical compounds $CFCl_3$ and CF_2Cl_2 and such other halogenated compounds as the Administrator determines may reasonably be anticipated to contribute to reductions in the concentration of ozone in the stratosphere;

"(2) the term 'stratosphere' means that part of the atmosphere above the tropopause.

"STUDIES BY ENVIRONMENTAL PROTECTION AGENCY

42 USC 7453. "SEC. 153. (a) The Administrator shall conduct a study of the cumulative effect of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere. The study shall include an analysis of the independent effects on the stratosphere especially such ozone in the stratosphere of—

"(1) the release into the ambient air of halocarbons,

"(2) the release into the ambient air of other sources of chlorine,

"(3) the uses of bromine compounds, and

"(4) emissions of aircraft and aircraft propulsion systems employed by operational and experimental aircraft.

The study shall also include such physical, chemical, atmospheric, biomedical, or other research and monitoring as may be necessary to ascertain (A) any direct or indirect effects upon the public health and welfare of changes in the stratosphere, especially ozone in the stratosphere, and (B) the probable causes of changes in the stratosphere, especially the ozone in the stratosphere.

"(b) The Administraor shall undertake research on—

"(1) methods to recover and recycle substances which directly or indirectly affect the stratosphere, especially ozone in the stratosphere,

"(2) methods of preventing the escape of such substances,

"(3) safe substitutes for such substances, and

"(4) other methods to regulate substances, practices, processes, and activities which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere.

"(c)(1) The studies and research conducted under this section may be undertaken with such cooperation and assistance from universities and private industry as may be available. Each department, agency, and instrumentality of the United States having the capability to do so is authorized and encouraged to provide assistance to the Administrator in carrying out the requirements of this section, including (notwithstanding any other provision of law) any services which such department, agency, or instrumentality may have the capability to render or obtain by contract with third parties.

"(2) The Administrator shall encourage the cooperation and assistance of other nations in carrying out the studies and research under this section. The Administrator is authorized to cooperate with and support similar research efforts of other nations.

"(d)(1) The Administrator shall undertake to contract with the National Academy of Sciences to study the state of knowledge and the adequacy of research efforts to understand (A) the effects of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere; (B) the health and welfare effects of modifications of the stratosphere, especially ozone in the stratosphere; and (C) methods of control of such substances, practices, processes, and activities including alternatives, costs, feasibility, and timing. The Academy shall make a report of its findings by January 1, 1978. Report.

"(2) The Administrator shall make available to the Academy such information in the Administrator's possession as is needed for the purposes of the study provided for in this subsection.

"(e) The Secretary of Labor shall study and transmit a report to the Administrator and the Congress not later than six months after date of enactment, with respect to the losses and gains to industry and employment which could result from the elimination of the use of halocarbons in aerosol containers and for other purposes. Such report shall include recommended means of alleviating unemployment or other undesirable economic impact, if any, resulting therefrom. Report to Administrator and Congress.

"(f)(1) The Administrator shall establish and act as Chairman of a Coordinating Committee for the purpose of insuring coordination of the efforts of other Federal agencies carrying out research and studies related to or supportive of the research provided for in subsections (a) and (b) and section 154. Coordinating Committee. Establishment.

"(2) Members of the Coordinating Committee shall include the

appropriate official responsible for the relevant research efforts of each of the following agencies:

"(A) the National Oceanic and Atmospheric Administration,
"(B) the National Aeronautics and Space Administration,
"(C) the Federal Aviation Administration,
"(D) the Department of Agriculture,
"(E) the National Cancer Institute,
"(F) the National Institute of Environmental Health Sciences,
"(G) the National Science Foundation, and the appropriate officials responsible for the relevant research efforts of such other agencies carrying out related efforts as the Chairman shall designate. A representative of the Department of State shall sit on the Coordinating Committee to encourage and facilitate international coordination.

"(3) The Coordinating Committee shall review and comment on plans for, and the execution and results of, pertinent research and studies. For this purpose, the agencies named in or designated under paragraph (2) of this subsection shall make appropriate and timely reports to the Coordinating Committee on plans for and the execution and results of such research and studies.

Reports to Coordinating Committee.

"(4) The Chairman may request a report from any Federal Agency for the purpose of determining if that agency should sit on the Coordinating Committee.

"(g) Not later than January 1, 1978, and biennially thereafter, the Administrator shall report to the appropriate committees of the House and the Senate, the results of the studies and research conducted under this section and the results of related research and studies conducted by other Federal agencies.

Report to congressional committees.

"RESEARCH AND MONITORING BY OTHER AGENCIES

42 USC 7454.

"SEC. 154. (a) The Administrator of the National Oceanic and Atmospheric Administration shall establish a continuing program of research and monitoring of the stratosphere for the purpose of early detection of changes in the stratosphere and climatic effects of such changes. Such Administrator shall on or before January 1, 1978, and biennially thereafter, transmit such report to the Administrator and the Congress on the findings of such research and monitoring. Such report shall contain any appropriate recommendations for legislation or regulation (or both).

Reports to Administrator and Congress.

"(b) The National Aeronautics and Space Administration shall, pursuant to its authority under title IV of the National Aeronautics and Space Act of 1958, continue programs of research, technology, and monitoring of the stratosphere for the purpose of understanding the physics and chemistry of the stratosphere and for the early detection of potentially harmful changes in the ozone in the stratosphere. Such Administration shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of the programs authorized in this subsection, together with any appropriate recommendations for legislation or regulation (or both).

42 USC 2481.

Reports to Administrator and Congress.

"(c) The Director of the National Science Foundation shall encourage and support ongoing stratospheric research programs and continuing research programs that will increase scientific knowledge of the effects of changes in the ozone layer in the stratosphere upon living organisms and ecosystems. Such Director shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and

Reports to Administrator and Congress.

the Congress on the results of such programs, together with any appropriate recommendations for legislation or regulation (or both).

"(d) The Secretary of Agriculture shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon animals, crops, and other plant life. Such Secretary shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of such programs together with any appropriate recommendations for legislation or regulation (or both). Report to Administrator and Congress.

"(e) The Secretary of Health, Education, and Welfare shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon human health. Such Secretary shall transmit reports by January 1, 1978, and biennially thereafter, to the Administrator and the Congress on the results of such programs, together with any appropriate recommendations for legislation or regulation (or both). Report to Administrator and Congress.

"(f) In carrying out subsections (a) through (e) of this section, the agencies involved (1) shall enlist and encourage cooperation and assistance from other Federal agencies, universities, and private industry, and (2) shall solicit the views of the Administrator with regard to plans for the research involved so that any such research will, if regulatory action by the Administrator is indicated, provide the preliminary information base for such action.

"PROGRESS OF REGULATION

"SEC. 155. The Administrator shall provide an interim report to the Congress by January 1, 1978, shall provide a final report within two years after date of enactment, and shall provide follow-up reports annually thereafter on the actions taken by the Environmental Protection Agency and all other Federal agencies to regulate sources of halocarbon emissions, the results of such regulations in protecting the ozone layer, and the need for additional regulatory action, if any. The reports under this section shall also include recommendations for the control of substances, practices, processes, and activities other than those involving halocarbons, which are found to affect the ozone in the stratosphere and which may cause or contribute to harmful effects on public health or welfare. Interim, final, and annual reports to Congress. 42 USC 7455.

"INTERNATIONAL COOPERATION

"SEC. 156. The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this part, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements. Agreements. Standards and regulations. 42 USC 7456. Report to Congress.

"REGULATIONS

"SEC. 157. (a) If at any time prior to the submission of the final report referred to in section 155 in the Administrator's judgment, any Notice to Congress. 42 USC 7457.

substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall simultaneously submit notice of the promulgation of such regulations to the Congress.

"(b) Upon submission of the final report referred to in section 155, and after consideration of the research and study under sections 153 and 154 and, consultation with appropriate Federal agencies and scientific entities, the Administrator shall propose regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control. Such regulations may exempt medical use products for which the Administrator determines there is no suitable substitute. Not later than three months after proposal of such regulations the Administrator shall promulgate such regulations in final form. From time to time, and under the same procedures, the Administrator may revise any of the regulations submitted under this subsection.

"OTHER PROVISIONS UNAFFECTED

42 USC 7458.

"SEC. 158. Nothing in this part shall be construed to alter or affect the authority of the Administrator under section 303 (relating to emergency powers), under section 231 (relating to aircraft emission standards), or under any other provision of this Act or to affect the authority of any other department, agency, or instrumentality of the United States under any other provision of law to promulgate or enforce any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere. In the case of any proposed rule respecting ozone in the stratosphere which has been published under the Toxic Substances Control Act prior to the date of enactment of this Act notwithstanding section 9(b) of such Act, nothing in this part shall be construed to prohibit or restrict the Administrator from taking any action under the Toxic Substances Control Act respecting the promulgation or enforcement of such rule.

Post, pp. 769, 791.

15 USC 2601 note.

15 USC 2608.

"STATE AUTHORITY

42 USC 7459.

"SEC. 159. (a) Nothing in this part shall preclude or deny any State or political subdivision thereof from adopting or enforcing any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere except as otherwise provided in subsection (b).

"(b) If a regulation of any substance, practice, process, or activity is in effect under this part in order to prevent or abate any risk to the stratosphere, or ozone in the stratosphere, no State or political subdivision thereof may adopt or attempt to enforce any requirement respecting the control of any such substance, practice, process, or activity to prevent or abate such risk, unless the requirement of the State or political subdivision is identical to the requirement of such

regulation. The preceding sentence shall not apply with respect to any law or regulation of any State or political subdivision controlling the use of halocarbons as propellants in aerosol spray containers.".

PREVENTION OF SIGNIFICANT DETERIORATION

SEC. 127. (a) Title I of the Clean Air Act is amended by adding the following new part at the end thereof:

"PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

"SUBPART I

"PURPOSES

"SEC. 160. The purposes of this part are as follows: 42 USC 7470.

"(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air), notwithstanding attainment and maintenance of all national ambient air quality standards;

"(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

"(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

"(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

"(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

"PLAN REQUIREMENTS

"SEC. 161. In accordance with the policy of section 101(b)(1), each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) identified pursuant to section 107(d)(1)(D) or (E). Regulations. 42 USC 7471. 42 USC 7401. *Ante*, p. 687.

"INITIAL CLASSIFICATIONS

"SEC. 162. (a) Upon the enactment of this part, all— 42 USC 7472.

"(1) international parks,

"(2) national wilderness areas which exceed 5,000 acres in size,

"(3) national memorial parks which exceed 5,000 acres in size, and

"(4) national parks which exceed six thousand acres in size and which are in existence on the date of enactment of the Clean Air Act Amendments of 1977 shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before such date of enactment shall be class I areas which may be redesignated as provided in this part.

"(b) All areas in such State identified pursuant to section 107(d)(1)(D) or (E) which are not established as class I under subsection (a) shall be class II areas unless redesignated under section 164.

Ante, p. 687.

"INCREMENTS AND CEILINGS

Sulfur oxide and particulate matter.
42 USC 7473.

"SEC. 163. (a) In the case of sulfur oxide and particulate matter, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under 165(d)(2)(C)(iv) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

"(b)(1) For any class I area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

"Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

"(2) For any class II area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

"Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

"(3) For any class III area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

"Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

"(4) The maximum allowable concentration of any air pollutant in any area to which this part applies shall not exceed a concentration for such pollutant for each period of exposure equal to—

"(A) the concentration permitted under the national secondary ambient air quality standard, or

"(B) the concentration permitted under the national primary ambient air quality standard,

whichever concentration is lowest for such pollutant for such period of exposure.

"(c)(1) In the case of any State which has a plan approved by the Administrator for purposes of carrying out this part, the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account: Notice and hearing.

"(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order. 15 USC 792.

"(B) the concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan, 16 USC 791a.

"(C) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities, and

"(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined in accordance with section 169(4).

"(2) No action taken with respect to a source under paragraph (1)(A) or (1)(B) shall apply more than five years after the effective date of the order referred to in paragraph (1)(A) or the plan referred to in paragraph (1)(B), whichever is applicable. If both such order and plan are applicable, no such action shall apply more than five years after the later of such effective dates.

"(3) No action under this subsection shall take effect unless the Governor submits the order or rule providing for such exclusion to the Administrator and the Administrator determines that such order or rule is in compliance with the provisions of this subsection. Order or rule.

"AREA REDESIGNATION

"SEC. 164. (a) Except as otherwise provided under subsection (c), a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II: 42 USC 7474.

"(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

"(2) a national park or national wilderness area established after the date of enactment of this Act which exceeds ten thousand acres in size.

Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 162(a)) may be redesignated by the State as class III if—

"(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

"(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

"(C) such redesignation otherwise meets the requirements of this part.

Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

Notice and hearing.

"(b)(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

Notice of redesignation.

"(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

List.

Regulations. Public inspection of plan.

"(C) The Administrator shall promulgate regulations not later than six months after date of enactment of this part, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

Notice and hearing.

"(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of

this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

"(c) Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e). Indian reservations.

"(d) The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within supporting analysis, to the Congress and the affected States within one year after enactment of this section. The Federal Land Manager shall consult with the appropriate States before making such recommendations. Report to Congress.

"(e) If any State affected by the redesignation of area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

"PRECONSTRUCTION REQUIREMENTS

"SEC. 165. (a) No major emitting facility on which construction is commenced after the date of the enactment of this part, may be constructed in any area to which this part applies unless— 42 USC 7475.

"(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

"(2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations; Regulation. Hearing.

"(3) the owner or operator of such facility demonstrates that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for

any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this Act;

"(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Act emitted from, or which results from, such facility;

"(5) the provisions of subsection (d) with respect to protection of class I areas have been complied with for such facility;

"(6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

"(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

"(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 111 of this Act has been promulgated subsequent to enactment of the Clean Air Act Amendments of 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

Ante, pp. 697, 699–701, 703; *Post*, p. 791.

"(b) The demonstration pertaining to maximum allowable increases required under subsection (a)(3) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on the date of enactment of the Clean Air Act Amendments of 1977, whose actual allowable emissions of air pollutants, after compliance with subsection (a)(4), will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

Permit applications, transmittal to Administrator. *Ante*, pp. 691–696.

"(c) Any completed permit application under section 110 for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

"(d)(1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

Notice.

"(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

"(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

"(C) (i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

"(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contrbute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

"(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations, which exceed the maximum allowable increases for class I areas, the State may issue a permit.

"(iv) In the case of a permit issued pursuant to clause (iii), such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides and particulates from such sources together with all other sources, will not exceed the following maximum allowable increases over the baseline concentration for such pollutants:

"Particulate matter:	Maximum allowable increase (in micrograms per cubic meter)
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	325

"(D) (i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C) (iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

Notice and hearing.

"(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may

Variance recommendations, transmittal to President.

approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

"(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such source, together with all other sources, will exceed the otherwise applicable maximum allowable increases for a period of exposure of twenty-four hours or less on not more than eighteen days during any annual period and that during such day such emissions will not exceed the following maximum allowable increases over the baseline concentration for such pollutant:

MAXIMUM ALLOWABLE INCREASE
[In micrograms per cubic meter]

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

Analysis.

"(e)(1) The review provided for in subsection (a) shall be preceded by an analysis in accordance with regulations of the Administrator, promulgated under this subsection, which may be conducted by the State (or any general purpose unit of local government) or by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under this Act which will be emitted from such facility.

Continuous air quality monitoring data.

"(2) Effective one year after date of enactment of this part, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

Regulations.

Regulations.

"(3) The Administrator shall within six months after the date of enactment of this part promulgate regulations respecting the analysis required under this subsection which regulations—

"(A) shall not require the use of any automatic or uniform buffer zone or zones,

"(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this Act which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of

continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

"(C) shall require the results of such analysis shall be available at the time of the public hearing on the application for such permit, and

"(D) shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part.

Any model or models designated under such regulations may be adjusted upon a determination, after notice and opportunity for public hearing, by the Administrator that such adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this part.

Models, adjustment. Notice and hearing.

"OTHER POLLUTANTS

"SEC. 166. (a) In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after the date of enactment of this part, promulgate regulations to prevent the significant deterioration of air quality which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after the date of the enactment of this part, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

Study and regulations. 42 USC 7476.

"(b) Regulations referred to in subsection (a) shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or promulgation in the same manner as required under section 110.

Effective date.

Ante, pp. 691–696.

"(c) Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 101 and section 160.

42 USC 7401.

"(d) The regulations of the Administrator under subsection (a) shall provide specific measures at least as effective as the increments established in section 163 to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

"(e) With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 110(c) contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 160 at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

Ante, p. 694.

"ENFORCEMENT

42 USC 7477. "SEC. 167. The Administrator shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 107 of this Act and which is not subject to an implementation plan which meets the requirements of this part.

Ante, p. 687.

"PERIOD BEFORE PLAN APPROVAL

42 USC 7478. "SEC. 168. (a) Until such time as an applicable implementation plan is in effect for any area, which plan meets the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this Act prior to enactment of this part shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b).

Regulation. "(b) If any regulation in effect prior to enactment of this part to prevent significant deterioration of air quality would be inconsistent with the requirements of section 162(a), section 163(b) or section 164(a), then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on which construction was commenced in accordance with this definition after June 1, 1975, and prior to the enactment of the Clean Air Act Amendments of 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to the enactment of the Clean Air Act Amendments of 1977.

"DEFINITIONS

42 USC 7479. "SEC. 169. For purposes of this part—

"(1) The term 'major emitting facility' means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities

which are nonprofit health or education institutions which have been exempted by the State.

"(2) (A) The term 'commenced' as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

"(B) The term 'necessary preconstruction approvals or permits' means those permits or approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

"(3) The term 'best available control technology' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act.

Ante, pp. 697, 699–701, 703; *Post*, p. 791.

"(4) The term 'baseline concentration' means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this part, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.".

Ante, pp. 701, 703; *Post*, p. 791.

(b) Within one year from the date of enactment of this Act the Administrator shall report to the Congress on the consequences of that portion of the definition of "major emitting facility" under the amendment made by subsection (a) which applies to facilities with the potential to emit two hundred and fifty tons per year or more. Such study shall examine the type of facilities covered, the air quality benefits of including such facilities, and the administrative aspect of regulating such facilities.

Report to Congress. 42 USC 7479 note.

(c) Not later than one year after the date of enactment of this Act, the Administrator shall publish a guidance document to assist the

Guidance document, publication. 42 USC 7470 note.

States in carrying out their functions under part C of title I of the Clean Air Act (relating to prevention of significant deterioration of air quality) with respect to pollutants, other than sulfur oxides and particulates, for which national ambient air quality standards are promulgated. Such guidance document shall include recommended strategies for controlling photochemical oxidants on a regional or multistate basis for the purpose of implementing part C and section 110 of such Act.

Ante, p. 731.

Ante, pp. 691-696.

(d) Not later than two years after the date of enactment of this Act, the Administrator shall complete a study and report to the Congress on the progress made in carrying out part C of title I of the Clean Air Act (relating to significant deterioration of air quality) and the problems associated with carrying out such section, including recommendations for legislative changes necessary to implement strategies for controlling photochemical oxidants on a regional or multistate basis.

Study, report to Congress.
42 USC 7470 note.

VISIBILITY PROTECTION

SEC. 128. (a) Part C of title I of the Clean Air Act, is amended by adding the following new section after section 168:

"SUBPART 2

"VISIBILITY PROTECTION FOR FEDERAL CLASS I AREAS

42 USC 7491.

"SEC. 169A. (a) (1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

Review, consultation.

"(2) Not later than six months after the date of the enactment of this section, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after such date of enactment, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

Revision.
List.

Study, report to Congress.

"(3) Not later than eighteen months after the date of enactment of this section, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

Recommendations.

"(A) methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in Federal areas referred to in paragraph (1), and

"(B) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment, and

"(C) methods for preventing and remedying such manmade air pollution and resulting visibility impairment.

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

Regulations, notice and hearing.

"(4) Not later than twenty-four months after the date of enactment of this section, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward

meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

"(b) Regulations under subsection (a)(4) shall—

"(1) provide guidelines to the States, taking into account the recommendations under subsection (a)(3) on appropriate techniques and methods for implementing this section (as provided in subparagraphs (A) through (C) of such subsection (a)(3)), and

Guidelines to States.

"(2) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a)(2) is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a), including—

"(A) except as otherwise provided pursuant to subsection (c), a requirement that each major stationary source which is in existence on the date of enactment of this section, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 110(c)) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 110(c)) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

Emissions control retrofit technology.

Ante, p. 694.

"(B) a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal specified in subsection (a).

In the case of a fossil-fuel fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1).

"(c)(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A), upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

Exemption, notice and hearing.

"(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

Applicability.

"(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

Concurrence by Federal land manager.

Consultation. Land manager's recommendations, summary. *Ante*, p. 694.

"(d) Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 110(c)) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

Buffer zones.

"(e) In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

Nondiscretionary duty. 42 USC 7604.

"(f) For purposes of section 304(a)(2), the meeting of the national goal specified in subsection (a)(1) by any specific date or dates shall not be considered a 'nondiscretionary duty' of the Administrator.

Definitions.

"(g) For the purpose of this section—

"(1) in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements;

"(2) in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

"(3) the term 'manmade air pollution' means air pollution which results directly or indirectly from human activities;

"(4) the term 'as expeditiously as practicable means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 110(c) for purposes of this section);

"(5) the term 'mandatory class I Federal areas' means Federal areas which may not be designated as other than class I under this part;

"(6) the terms 'visibility impairment' and 'impairment of visibility' shall include reduction in visual range and atmospheric discoloration; and

"(7) the term 'major stationary source' means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incenerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer

facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.".

NONATTAINMENT AREAS

SEC. 129. (a)(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524–30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act). 42 USC 7502 note. 41 CFR 51.18. *Post*, pp. 761, 769, 770.

(2) Before July 1, 1979, the requirements of the regulation referred to in paragraph (1) shall be waived by the Administrator with respect to any pollutant if he determines that the State has— Waiver.

(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met; Emissions inventory. *Post*, p. 746.

(B) an enforceable permit program which— Permit program.

(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and *Post*, p. 748.

(ii) requires existing sources to achieve such reduction in emissions in the area as may be obtained through the adoption, at a minimum of reasonably available control technology, and

(C) a program which requires reductions in total allowable emissions in the area prior to January 1, 1979, so as to provide for the same level of emission reduction as would result from the application of the regulation referred to in paragraph (1).

The Administrator shall terminate such waiver if in his judgment at the reduction in emissions actually being attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph. Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection. Termination. Reinstatement, application.

(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit. Permits.

(b) Title I of such Act is amended by adding the following new part at the end thereof:

"PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

"DEFINITIONS

42 USC 7501. "SEC. 171. For the purpose of this part and section 110(a)(2)(I)—

Ante, p. 694.

"(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 110(a)(2)(I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a).

"(2) The term 'nonattainment area' means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 107(d)(1).

Ante, p. 687.

"(3) The term 'lowest achievable emission rate' means for any source, that rate of emissions which reflects—

"(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

"(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

"(4) The terms 'modifications' and 'modified' mean the same as the term 'modification' as used in section 111(a)(4) of this Act.

42 USC 7411.

"NONATTAINMENT PLAN PROVISIONS

42 USC 7502. "SEC. 172. (a)(1) The provisions of an applicable implementation plan for a State relating to attainment and maintenance of national ambient air quality standards in any nonattainment area which are required by section 110(a)(2)(I) as a precondition for the construction or modification of any major stationary source in any such area on or after July 1, 1979, shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable, but, in the case of national primary ambient air quality standards, not later than December 31, 1982.

"(2) In the case of the national primary ambient air quality standard for photochemical oxidants or carbon monoxide (or both) if the State demonstrates to to the satisfaction of the Administrator (on or before the time required for submission of such plan) that such attainment is not possible in an area with respect to either or both of such pollutants within the period prior to December 31, 1982, despite the implementation of all reasonably available measures, such provisions shall provide for the attainment of the national primary standard

for the pollutant (or pollutants) with respect to which such demonstration is made, as expeditiously as practicable but not later than December 31, 1987.

"(b) The plan provisions required by subsection (a) shall—

"(1) be adopted by the State (or promulgated by the Administrator under section 110(c)) after reasonable notice and public hearing; Notice and hearing. *Ante*, p. 694.

"(2) provide for the implementation of all reasonably available control measures as expeditiously as practicable;

"(3) require, in the interim, reasonable further progress (as defined in section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;

"(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additional reductions to assure attainment of each standard by the date required under paragraph (1); Emissions inventory.

"(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area;

"(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements); Permits.

"(7) identify and commit the financial and manpower resources necessary to carry out the plan provisions required by this subsection;

"(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section;

"(9) evidence public, local government, and State legislative involvement and consultation in accordance with section 174 (relating to planning procedures) and include (A) an identification and analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions required by this subsection and of the alternatives considered by the State, and (B) a summary of the public comment on such analysis;

"(10) include written evidence that the State, the general purpose local government or governments, or a regional agency designated by general purpose local governments for such purpose, have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and are committed to implement and enforce the appropriate elements of the plan;

"(11) in the case of plans which make a demonstration pursuand to paragraph (2) of subsection (a)—

"(A) establish a program which requires, prior to issuance of any permit for construction or modification of a major emitting facility, an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and Program.

social costs imposed as a result of its location, construction, or modification;

Schedule establishment.

"(B) establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program; and

"(C) identify other measures necessary to provide for attainment of the applicable national ambient air quality standard not later than December 31, 1987.

"(c) In the case of a State plan revision required under the Clean Air Act Amendments of 1977 to be submitted before July 1, 1982, by reason of a demonstration under subsection (a)(2), effective on such date such plan shall contain enforceable measures to assure attainment of the applicable standard not later than July 1, 1987.

"PERMIT REQUIREMENTS

42 USC 7503.

"SEC. 173. The permit program required by section 172(b)(6) shall provide that permits to construct and operate may be issued if—

"(1) the permitting agency determines that—

"(A) by the time the facility is to commence operation, total allowable emissions from existing sources in the region, from new sources which are not major emitting facilities, and from the proposed facility will be sufficiently less than total emissions from existing sources allowed under the implementation plan prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 172) reasonable further progress (as defined in section 171); or

"(B) that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 172(b);

"(2) the proposed source is required to comply with the lowest achievable emission rate; and

"(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Act.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1)(A) shall be legally binding before such permit may be issued.

"PLANNING PROCEDURES

42 USC 7504.

"SEC. 174. (a) Within six months after the enactment of the Clean Air Act Amendments of 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local

governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after the enactment of the Clean Air Act Amendments of 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local governments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

Consultation.

"(b) The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, United States Code, and the air quality maintenance planning process required under section 110, and such planning processes shall take into account the requirements of this part.

Ante, pp. 691-696.

"ENVIRONMENTAL PROTECTION AGENCY GRANTS

"SEC. 175. (a) The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 174(a) for payment of the reasonable costs of developing a plan revision under this part.

42 USC 7505.

"(b) The amount granted to any organization under subsection (a) shall be 100 percent of any additional costs of developing a plan revision under this part for the first two fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to such organization for transportation or air quality maintenance planning. Grants under this section shall not be used for construction.

"LIMITATIONS ON CERTAIN FEDERAL ASSISTANCE

"SEC. 176. (a) The Administrator shall not approve any projects or award any grants authorized by this Act and the Secretary of Transportation shall not approve any projects or award any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in any air quality control region—

42 USC 7506.

23 USC 101 *et seq.*

"(1) in which any primary ambient air quality standard has not been attained,

"(2) where transportation control measures are necessary for the attainment of such standard, and

"(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 172 or that reasonable efforts toward submitting such an implementation plan

are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 172 to be submitted before July 1, 1982).

"(b) In any area in which the State or, as the case may be, the general purpose local government or governments or any regional agency designated by such general purpose local governments for such purpose, is not implementing any requirement of an approved or promulgated plan under section 110, including any requirement for a revised implementation plan under this part, the Administrator shall not make any grants under this Act.

Ante, pp. 691–696.

"(c) No department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

"(d) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, title 23 of the United States Code, and the Housing and Urban Development Act.

49 USC 1601 note.
12 USC 1749aa note.

"NEW MOTOR VEHICLE EMISSION STANDARDS IN NONATTAINMENT AREAS

42 USC 7507.
42 USC 7543.

"SEC. 177. Notwithstanding section 209(a), any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209(a) respecting such vehicles if—

"(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

"(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

"GUIDANCE DOCUMENTS

42 USC 7508.
Ante, p. 689;
Post, p. 790.

"SEC. 178. The Administrator shall issue guidance documents under section 108 for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after the date of enactment of this part and shall be revised at least every two years thereafter.".

Implementation plan revision.
42 USC 7502 note.
Post, p. 795.
Ante, pp. 693, 694.

(c) Notwithstanding the requirements of section 406(d)(2) (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act each State in which there is any nonattainment area (as defined in

subpart D of the Clean Air Act) shall adopt and submit an implementation plan revision which meets the requirements of section 101 (a)(2)(I) and subpart D of the Clean Air Act not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172 (b) and (c) of such Act.

42 USC 7401.
Ante, p. 746.
State plan adoption, submittal to Administrator.

TITLE II—AMENDMENTS RELATING PRIMARILY TO TITLE II OF THE CLEAN AIR ACT

LIGHT-DUTY MOTOR VEHICLE EMISSIONS

SEC. 201. (a) Subparagraph (A) of section 202(b)(1) of the Clean Air Act is amended to read as follows:

Standards.
42 USC 7521.

"(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.".

(b) Subparagraph (B) of section 202(b)(1) of such Act is amended to read as follows:

Standards.

"(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for

model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

"(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by United States manufacturers and purchased from such manufacturers; and

"(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.".

42 USC 7521.

(c) Section 202(b) of such Act is amended by striking out paragraph (5) thereof and substituting the following:

Waiver, application.

"(5)(A) At any time after August 31, 1978, any manufacturer may file an application requesting the waiver for model years 1981 and 1982 of the effective date of the emission standard required by paragraph (1)(A) for carbon monoxide applicable to any model (as determined by the Administration) of light-duty motor vehicles and engines manufactured in such model years. The Administrator shall make his determination with respect to any such application within sixty days after such application is filed with respect to such model. If he determines, in accordance with the provisions of this paragraph, that such waiver should be granted, he shall simultaneously with such determination prescribe by regulation emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide from such model of vehicles or engines manufactured during model years 1981 and 1982.

Standards, regulations.

Limitation.

"(B) Any standards prescribed under this paragraph shall not permit emissions of carbon monoxide from vehicles and engines to which such waiver applies to exceed 7.0 grams per vehicle per mile.

Decision. Hearing.

"(C) Within sixty days after receipt of the application for any such waiver and after public hearing, the Administrator shall issue a decision granting or refusing such waiver. The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

"(i) such waiver is essential to the public interest or the public health and welfare of the United States;

"(ii) all good faith efforts have been made to meet the standards established by this subsection;

"(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

"(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

Waiver, petition. Notice and hearing.

"(6)(A) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning

after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

"(i) that such waiver would not endanger public health,

"(ii) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

"(iii) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act upon the expiration of the waiver. No waiver under this subparagraph granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

42 USC 6201 note. Applicability.

"(B) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not to exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles and engines manufactured by such manufacturer during the four model year period beginning with the model year 1981 if the manufacturer can show that such waiver is necessary to permit the use of diesel engine technology in such class or category of vehicles or engines. Such waiver may be granted if the Administrator determines—

Waiver, petition. Notice and hearing.

"(i) that such waiver will not endanger public health,

"(ii) that such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act, and

"(iii) that the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.".

STUDIES AND RESEARCH OBJECTIVE FOR OXIDES OF NITROGEN

SEC. 202. (a) The Administrator of the Environmental Protection Agency shall conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare. The Administrator shall submit a report of such study to the Congress, together with recommendations not later than July 1, 1980.

42 USC 7521 note.

Report to Congress, recommendations.

(b) Section 202(b) of the Clean Air Act is amended by adding a new paragraph (7) as follows:

Ante, p. 752.

"(7) The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard

Regulations. Demonstration vehicles.

for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after enactment of the Clean Air Act Amendments of 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this Act. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.".

STUDY AND REPORT OF FUEL CONSUMPTION

Report to Congress. 42 USC 7551.

SEC. 203. (a) Following each motor vehicle model year, the Administrator of the Environmental Protection Agency shall report to the Congress respecting the motor vehicle fuel consumption associated with the standards applicable for the immediately preceding model year.

Submittal to Congress.

(b) The Secretary of Transportation and the Secretary of Energy shall each submit to Congress, as promptly as practicable following submission by the Administrator of the fuel consumption report referred to in subsection (a), separate reports respecting such fuel consumption.

STATE GRANTS

42 USC 7544.

SEC. 204. Section 210 of such Act is amended by adding the following at the end thereof: "Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.".

COST OF CERTAIN EMISSION CONTROL PARTS

Post, p. 756. 42 USC 7541.

SEC. 205. Section 207(a) of the Clean Air Act is amended by adding the following at the end thereof: "(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 202 of this Act, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term 'designed for emission control' as used in the preceding sentence means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).".

Post, p. 755.

Ante, pp. 702, 751–753; *Post*, pp. 758–761, 765, 767, 769, 791.

"Designed for emission control."

WARRANTIES

SEC. 206. Section 203(a)(4) of the Clean Air Act is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting a comma, and by adding the following new subparagraphs: 42 USC 7522.

"(C) except as provided in subsection (c)(3) of section 207, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this Act is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, *Infra.*

"(D) to fail or refuse to comply with the terms and conditions of the warranty under section 207(a) or (b) with respect to any vehicle.". *Ante*, p. 754; *Post*, p. 756.

CALIFORNIA WAIVER

SEC. 207. Section 209(b) of the Clean Air Act is amended to read as follows: 42 USC 7543.

"(b)(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that— Notice and hearing.

"(A) the determination of the State is arbitrary and capricious,

"(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

"(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part. *Post*, pp. 759, 760, 765, 791.

"(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

"(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this title.".

MAINTENANCE INSTRUCTIONS

SEC. 208. Paragraph (3) of subsection (c) of section 207 of the Clean Air Act is amended to read as follows: 42 USC 7541.

"(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2). *Post*, p. 756.

"(B) The instruction under subparagraph (A) of this paragraph

shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

"(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service so identified is used in connection with such vehicle or engine, and

"(ii) the Administrator finds that such a waiver is in the public interest.

Certificate of conformity, label.

"(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 202 of this Act. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.".

Ante, pp. 702, 751–753; *Post*, pp. 758–761, 765, 767, 769, 791.

WARRANTIES AND MOTOR VEHICLE PARTS CERTIFICATION

42 USC 7541.

SEC. 209. (a) Section 207(b)(2) of the Clean Air Act is amended by adding the following at the end thereof: "No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2).".

Ante, p. 754.

(b) Section 207(a) of such Act is amended by striking out "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively, by inserting "(1)" after "(a)" and by adding the following new paragraph at the end thereof:

"(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 202. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than two years following the date of the enactment of this paragraph.".

Regulations.

"Emission control device or system."

(c) Section 207(b) of such Act, as amended by subsection (a), is amended by adding the following at the end thereof: "For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968.".

REPAIR AT OWNER'S PLACE OF CHOOSING

SEC. 210. Section 207 of the Clean Air Act is amended by adding the following new subsection:

"(g) For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last three sentences of section 207(a)(1)), unless such part, item, or device is covered by any warranty not mandated by this Act.". *Ante*, p. 756.

HIGH ALTITUDE PERFORMANCE ADJUSTMENTS

SEC. 211. (a) Section 203(a) of the Clean Air Act is amended by adding the following at the end thereof: "No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited Act under such paragraph (3) if such action is in accordance with section 215". *Ante*, p. 755; *Post*, p. 762. *Infra.*

(b) Part A of title II of such Act is amended by inserting the following new section after section 214:

"HIGH ALTITUDE PERFORMANCE ADJUSTMENTS

"SEC. 215. (a)(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title (including any alteration or adjustment of such element), shall be treated as not in violation of section 203(a) if such action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) and approved by the Administrator. 42 USC 7549. *Supra.*

"(2) If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance with respect to each standard under section 202 at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice. Finding. *Ante*, pp. 702, 751-753; *Post*, pp. 758-761, 765, 767, 769, 791.

"(b)(1) Instructions respecting each class or category of vehicles or engines to which this title applies providing for such vehicle and engine adjustments and modifications as may be necessary to insure emission control performance at different altitudes shall be submitted by the manufacturer to the Administrator pursuant to regulations promulgated by the Administrator.

"(2) Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by such manufacturer of section 203(a)(3) for purposes of the penalties contained in section 205. Violations. *Post*, p. 762.

"(3) Such instructions shall provide, in addition to other adjustments, for adjustments for vehicles moving from high altitude areas to low altitude areas after the initial registration of such vehicles.

"(c) No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 203(a)) unless the manufacturer demonstrates to the satisfaction of the Administrator that the use of such manufacturer parts is necessary to insure emission control performance.

Effective date.

"(d) Before January 1, 1981 the authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator under regulations promulgated before the date of the enactment of this Act) but after December 31, 1981, such authority shall be available only in any such State in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any national ambient air quality standard for auto-related pollutants has not been attained.".

DEALER CERTIFICATION

Ante, pp. 754–756.

SEC. 212. Section 207 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(f)(1) Upon the sale of each new light-duty motor vehicle by a dealer, the dealer shall furnish to the purchaser a certificate that such motor vehicle conforms to the applicable regulations under section 202, including notice of the purchaser's rights under paragraph (2).

Ante, pp. 702, 751–753; *Post*, pp. 758–761, 765, 767, 769, 791.

"(2) If at any time during the period for which the warranty applies under subsection (b), a motor vehicle fails to conform to the applicable regulations under section 202 as determined and subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in section 207(b)(2) (without regard to subparagraph (C) thereof).

42 USC 7543.

"(3) Nothing in section 209(a) shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).".

HIGH ALTITUDE REGULATIONS

42 USC 7525.

SEC. 213. (a) Section 206 of the Clean Air Act is amended by adding the following new subsection:

"(f)(1) All light duty vehicles and engines manufactured during or after model year 1984 shall comply with the requirements of section 202 of this Act regardless of the altitude at which they are sold.

Report to Congress.

"(2) By October 1, 1978, the Administrator shall report to the Congress on the economic impact and technological feasibility of the requirements found in subparagraph (1) of this subsection. The report is also to evaluate the technological feasibility and the health consequences of separate proportional emission standards for light duty vehicles and engines in high altitude areas that would reflect a comparable percentage of reduction in emissions to that achieved by light duty vehicles and engines in low altitude areas.".

42 USC 7521.

(b) Section 202 of such Act is amended by adding the following new subsection at the end thereof:

Applicability.

"(f)(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

Emission reduction percentage.

"(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions

of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in section 202(b). This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

"(3) Section 307(d) shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to— Applicability. *Post*, p. 772.

"(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

"(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

"(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.".

ASSURANCE OF PROTECTION OF PUBLIC HEALTH AND SAFETY

SEC. 214. (a) Section 202(a) of the Clean Air Act is amended by inserting "paragraph (1) of" before "this subsection" in paragraph (2) thereof and by adding a new paragraph at the end thereof: *Post*, p. 765. 42 USC 7521.

"(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

"(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to standards prescribed under this subsection without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 214.". *Post*, p. 767.

(b) Section 206(a) of such Act is amended by adding at the end thereof the following: Certificate of conformity. *Post*, p. 762.

"(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorpo-

rated in, such vehicle or engine conforms to applicable requirements of section 202(a)(4).

Ante, p. 759.

Testing and reporting requirements.

"(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.".

42 USC 7525.

(c)(1) Section 206(b)(2)(A)(i) of such Act is amended by inserting "and with the requirements of section 202(a)(4)" after "conformity was issued".

(2) Section 206(b)(2)(A) of such Act is amended by inserting "and requirements" after "such regulations" in each place it appears.

FILL PIPE STANDARDS

Ante, p. 759.

SEC. 215. Section 202(a) of the Clean Air Act is amended by adding the following new paragraph at the end thereof:

New motor vehicles, regulations.

"(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

"(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

"(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

"Fill pipe."

"(D) For the purpose of this paragraph, the term 'fill pipe' shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.".

ONBOARD HYDROCARBON TECHNOLOGY

Supra.

SEC. 216. Section 202(a) of the Clean Air Act is amended by adding the following new paragraph at the end thereof:

Feasibility determination.

"(6) The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor

recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.". Regulations.

TEST PROCEDURES FOR MEASURING EVAPORATIVE EMISSIONS

SEC. 217. Section 202(b)(1) of the Clean Air Act is amended by adding a new subparagraph (C) as follows: Model year 1978 engines and vehicles.

"(C) Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after date of enactment of this subparagraph.". *Ante*, p. 751. Regulations.

CERTAIN MINOR AND TECHNICAL AND CONFORMING AMENDMENTS

SEC. 218. (a) Section 203(a)(2) of the Clean Air Act is amended by inserting the following before the semicolon: "or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 206(c)". 42 USC 7522. 42 USC 7525.

(b) Section 204(a) of such Act is amended by striking out "paragraph (1), (2), (3), or (4) of". 42 USC 7523.

(c) Section 302(d) of such Act is amended by inserting before the period at the end thereof the following: "and includes the Commonwealth of the Northern Mariana Islands". 42 USC 7602.

(d) Section 203(b)(3) of such Act is amended by striking out "subsection (a)" the second time it appears and inserting in lieu thereof "section 202" and by striking out "country of export" in each place it appears and inserting "country which is to receive such vehicle or engine".

TAMPERING

SEC. 219. (a) Section 203(a)(3) of the Clean Air Act is amended by inserting "(A)" after "(3)" and by adding the following new subparagraph (B) at the end thereof: Motor vehicle related businesses.

"(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title following its sale and delivery to the ultimate purchaser, or".

Ante, p. 757.

(b) Section 203(a) of such Act, as amended by section 211 of this Act, is amended by adding the following at the end thereof: "Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term 'manufacturer parts' means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine.".

"Manufacturer parts."

(c) Section 205 of such Act is amended to read as follows:

"PENALTIES

42 USC 7524.
Ante, pp. 755, 761.
42 USC 7522.

"SEC. 205. Any person who violates paragraph (1), (2), or (4) of section 203(a) or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 203(a) shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3)(B) of such section 203(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.".

TESTING BY SMALL MANUFACTURERS

Regulations.
42 USC 7525.

SEC. 220. Section 206(a)(1) of the Clean Air Act is amended by adding at the end thereof the following: "In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 202 for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life (as determined under section 202(d)) with the regulations prescribed under section 202 of this Act.".

Ante, pp. 702, 751-753, 758-761; *Post*, pp. 765, 767, 769, 791.

PARTS STANDARDS; PREEMPTION OF STATE LAW

42 USC 7543.

SEC. 221. Section 209 of the Clean Air Act (relating to State standards) is amended by redesignating subsection (c) as (d) and by inserting after subsection (b) the following new subsection:

"(c) Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 207(a)(2), no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).".

Ante, p. 756.

TESTING OF FUELS AND FUEL ADDITIVES

Regulations.
42 USC 7545.

SEC. 222. (a) Section 211 of the Clean Air Act is amended by adding the following new subsections at the end thereof:

"(e)(1) Not later than one year after the date of enactment of this subsection and after notice and opportunity for a public hearing, the

Administrator shall promulgate regulations which implement the authority under subsection (b)(2) (A) and (B) with respect to each fuel or fuel additive which is registered on the date of promulgation of such regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

Manufacturer reporting requirements.

"(2) Regulations under subsection (b) to carry out this subsection shall require that the requisite information be provided to the Administrator by each such manufacturer—

"(A) prior to registration, in the case of any fuel or fuel additive which is not registered on the date of promulgation of such regulations; or

"(B) not later than three years after the date of promulgation of such regulations, in the case of any fuel or fuel additive which is registered on such date.

Exemptions and cost-sharing.

"(3) In promulgating such regulations, the Administrator may—

"(A) exempt any small business (as defined in such regulations) from or defer or modify the requirements of, such regulations with respect to any such small business;

"(B) provide for cost-sharing with respect to the testing of any fuel or fuel additive which is manufactured or processed by two or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

"(C) exempt any person from such regulations with respect to a particular fuel or fuel additive upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing.

New fuel and fuel additive content.

"(f)(1) Effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206.

Ante, pp. 758–760, 762; *Post*, p. 768.

Gasoline content.

"(2) Effective November 30, 1977, it shall be unlawful for any manufacturer of any fuel to first introduce into commerce any gasoline which contains a concentration of manganese in excess of .0625 grams per gallon of fuel.

Fuel additives, concentration restrictions.

"(3) Any manufacturer of any fuel or fuel additive which prior to March 31, 1977, and after January 1, 1974, first introduced into commerce or increased the concentration in use of a fuel or fuel additive that would otherwise have been prohibited under paragraph (1) if introduced on or after March 31, 1977 shall, not later than September 15, 1978, cease to distribute such fuel or fuel additive in commerce. During the period beginning 180 days after the date of the enactment of this subsection and before September 15, 1978, the Administrator shall prohibit, or restrict the concentration of any fuel additive which he determines will cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified under section 206.

Waiver of fuel and fuel additive prohibitions.

"(4) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection if he determines that the applicant has established that such fuel or fuel additive or a specified

concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206. If the Administrator has not acted to grant or deny an application under this paragraph within one hundred and eighty days of receipt of such application, the waiver authorized by this paragraph shall be treated as granted.

Ante, pp. 758-760, 762; *Post*, p. 768.

Judicial review.

"(5) No action of the Administrator under this section may be stayed by any court pending judicial review of such action.".

42 USC 7545.

(b) Section 211(d) of such Act is amended by inserting "or (f) after "(a)".

SMALL REFINERIES

SEC. 223. Section 211 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

Definitions.

"(g)(1) For the purposes of this subsection:

"(A) The terms 'gasoline' and 'refinery' have the meaning provided under regulations of the Administrator promulgated under this section.

"(B) The term 'small refinery' means a refinery or a portion of refinery producing gasoline—

"(i) the gasoline producing capacity of which was in operation or under construction at any time during the one-year period immediately preceding October 1, 1976, and

"(ii) which has a crude oil or bona fide feed stock capacity (as determined by the Administrator) of 50,000 barrels per day or less, and

"(iii) which is owned or controlled by a refiner with a total combined crude oil or bona fide feed stock capacity (as determined by the Administrator) of 137,500 barrels per day or less.

Lead additives, restrictions.

"(2) No regulations of the Administrator under this section (or any amendment or revision thereof) respecting the control or prohibition of lead additives in gasoline shall require a small refinery prior to October 1, 1982, to reduce the average lead content per gallon of gasoline refined at such refinery below the applicable amount specified in the table below:

"If the average gasoline production of the small refinery for the immediately preceding calendar year (or, in the case of refineries under construction, half the designed crude oil capacity) was (in barrels per day):	The applicable amount is (in grams per gallon)
5,000 or under	2.65.
5,001 to 10,000	2.15.
10,001 to 15,000	1.65.
15,001 to 20,000	1.30.
20,001 to 25,000	.80.
25,001 or over	as prescribed by the Administrator, but not greater than 0.80.

Regulations.

The Administrator may promulgate such regulations as he deems appropriate with respect to the reduction of the average lead content of gasoline refined by small refineries on and after October 1, 1982, taking into account the experience under the preceding provisions of this paragraph.

"(3) Effective on the date of the enactment of this subsection, the regulations of the Administrator under this section respecting fuel additives (40 CFR part 80) shall be deemed amended to comply with the requirement contained in paragraph (2).

"(4) Nothing in this section shall be construed to preempt the right of any State to take action as permitted by section 211(c)(4) of this Act.". 42 USC 7545.

EMISSION STANDARDS FOR HEAVY DUTY VEHICLES OR ENGINES AND CERTAIN OTHER VEHICLES OR ENGINES

SEC. 224. (a) Section 202(a) of the Clean Air Act is amended by adding the following new paragraph at the end thereof: 42 USC 7521.

"(3)(A)(i) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen from classes or categories of heavy-duty vehicles or engines manufactured during and after model year 1979. Such regulations applicable to such pollutants from such classes or categories of vehicles or engines manufactured during model years 1979 through 1982 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Regulations. Emission standards for heavy-duty vehicles or engines.

"(ii) Unless a different standard is temporarily promulgated as provided in subparagraph (B) or unless the standard is changed as provided in subparagraph (E), regulations under paragraph (1) of this subsection applicable to emissions from vehicles or engines manufactured during and after model year—

"(I) 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent, and 1983 standards for hydrocarbons and carbon monoxide.

"(II) 1985, in the case of oxides of nitrogen, shall contain standards which require a reduction of at least 75 per cent, 1985 standards for oxides of nitrogen.

from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during the baseline model year.

"(iii) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of particulate matter from classes or categories of vehicles manufactured during and after model year 1981 (or during any earlier model year, if practicable). Such regulations shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Such standards shall be promulgated and shall take effect as expeditiously as practicable taking into account the period necessary for compliance. 1981 standards for particulate matter.

"(iv) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, or such other factors as may be appropriate. Vehicle and engine classes or categories, criteria.

"Baseline model year."

"(v) For the purpose of this paragraph, the term 'baseline model year' means, with respect to any pollutant emitted from any vehicle or engine, or class or category thereof, the model year immediately preceding the model year in which Federal standards applicable to such vehicle or engine, or class or category thereof, first applied with respect to such pollutant.

Standards, triennial revision.

"(B) During the period of June 1 through December 31, 1979, and during each period of June 1 through December 31 of each third year after 1979, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions of from any standard which applies in the previous model year.

"(C) Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

"(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

"(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c), issued a report substantially contrary to the findings of the Administrator under clause (i).

Report to Congress. Contents.

"(D) A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

"(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

"(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of title I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

Ante, p. 731.

"(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

"(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.

Pollutant-specific study.

"(E)(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported

Publication in Federal Register and report to Congress.

to the Congress not later than June 1, 1979, and before June 1 of each third year thereafter.

"(ii) On the basis of such study and such other information as is available to him (including the studies under section 214), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated. *Infra*

"(F) For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 206(f)(1)) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.". Motorcycle classification. *Ante*, p. 758.

(b) Section 202(b)(3) of such Act is amended by adding the following new subparagraph at the end thereof: "Heavy duty vehicle." 42 USC 7521.

"(C) The term 'heavy duty vehicle' means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.".

(c) Section 312 of such Act is amended by inserting "AND STUDIES OF COST-EFFECTIVENESS ANALYSES" at the end of the heading thereof and by adding the following new subsection at the end thereof: Use of cost-effectiveness, study. 42 USC 7612.

"(c) Not later than January 1, 1979, the Administrator shall study the possibility of increased use of cost-effectiveness analyses in devising strategies for the control of air pollution and shall report its recommendations to the Congress, including any recommendations for revisions in any provision of this Act. Such study shall also include an analysis and report to Congress concerning whether or not existing air pollution control strategies are adequate to achieve the purposes of this Act." Report to Congress. Contents.

(d) Part A of title II of such Act is amended by redesignating section 214 as section 216 and by inserting after section 213 the following new section: 42 USC 7550.

"STUDY OF PARTICULATE EMISSIONS FROM MOTOR VEHICLES

"SEC. 214. (a)(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 202 applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives. 42 USC 7548. *Ante*, pp. 702, 751–753, 758–761, 765; *Supra; Post*, pp. 769, 791.

"(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

Report to Congress.

"(b) The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) not later than two years after the date of the enactment of the Clean Air Act Amendments of 1977. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph (2) of subsection (a).".

Certificate of conformity. *Ante*, p. 758.

(e) Section 206 of such Act (relating to compliance testing and certification) is amended by adding the following new subsection at the end thereof:

"(g)(1) In the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 202(a) of this Act applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) and shall not be suspended or revoked under subsection (b) for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing. In the case of motorcycles to which such a standard applies, such a certificate may be issued notwithstanding such failure if the manufacturer pays such a penalty.

Ante, pp. 759, 760, 765; *Post*, p. 791.

Motorcycles.

"(2) No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 202(a) with respect to such class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than one year after the date of enactment of the Clean Air Act Amendments of 1977.

Vehicles or engines, testing.

"(3) The regulations promulgated under paragraph (1) shall, not later than one year after the date of enactment of the Clean Air Act Amendments of 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

Penalties.

"(A) may vary from pollutant-to-pollutant;

"(B) may vary by class or category or vehicle or engine;

"(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 202;

Ante, pp. 702, 751–753, 758–761, 765, 767; *Post*, pp. 769, 791.

"(D) be increased periodically in order to create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

"(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

"(4) In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 207(b)(2)

Ante, p. 756.

and any action under section 207(c) shall be required to be effective only for the emission levels which the Administrator determines that such certificate was issued and not for the emission levels required under the applicable standard. *Ante*, p. 755.

"(5) The authorities of section 208(a) shall apply, subject to the conditions of section 208(b), for purposes of this subsection.". 42 USC 7542.

(g) Section 202(d) of such Act is amended by striking out "and" at the end of paragraph (1) thereof; by inserting "(other than motorcycles or motorcycle engines)" after "engines" in paragraph (2) thereof; by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and by adding a new paragraph (3) to read as follows: 42 USC 7521.

"(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.".

AIRCRAFT EMISSIONS STANDARDS

SEC. 225. Section 231(c) of the Clean Air Act is amended to read as follows: 42 USC 7571.

"(c) Any regulations in effect under this section on date of enactment of the Clean Air Act Amendments of 1977 or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.". Notice and hearing.

CARBON MONOXIDE INTRUSION INTO SUSTAINED USE VEHICLES

SEC. 226. (a) The Administrator, in conjunction with the Secretary of Transportation, shall study the problem of carbon monoxide intrusion into the passenger area of sustained-use motor vehicles. Such study shall include an analysis of the sources and levels of carbon monoxide in the passenger area of such vehicles and a determination of the effects of carbon monoxide upon the passengers. The study shall also review available methods of monitoring and testing for the presence of carbon monoxide and shall analyze the cost and effectiveness of alternative methods of monitoring and testing. The study shall analyze the cost and effectiveness of alternative strategies for attaining and maintaining acceptable levels of carbon monoxide in the passenger area of such vehicles. Within one year the Administrator shall report to the Congress respecting the results of such study. Study. 42 USC 7521 note. Report to Congress.

(b) For the purpose of this section, the term "sustained-use motor vehicle" means any diesel or gasoline fueled motor vehicle (whether light or heavy duty) which, as determined by the Administrator (in conjunction with the Secretary), is normally used and occupied for a sustained, continuous, or extensive period of time, including buses, taxicabs, and police vehicles. "Sustained-use motor vehicle."

TITLE III—AMENDMENTS RELATING PRIMARILY TO TITLE III OF THE CLEAN AIR ACT

DEFINITIONS

SEC. 301. (a) Section 302 of the Clean Air Act is amended by adding the following new subsections at the end thereof: 42 USC 7602.

"(i) The term 'Federal land manager' means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

"(j) Except as otherwise expressly provided, the terms 'major stationary source' and 'major emitting facility' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

"(k) The terms 'emission limitation' and 'emission standard' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

"(l) The term 'standard of performance' means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

"(m) The term 'means of emission limitation' means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

"(n) The term 'primary standard attainment date' means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

"(o) The term 'delayed compliance order' means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

"(p) The term 'schedule and timetable of compliance' means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.".

42 USC 7602.

(b) Section 302(e) of such Act is amended to read as follows:

"(e) The term 'person' includes an individual corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.".

(c) Section 302(g) of such Act is amended to read as follows:

"(g) The term 'air pollutant' means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.".

EMERGENCY POWERS

42 USC 7603.

SEC. 302. (a) Section 303 of the Clean Air Act is amended by inserting "(a)" after "303" and by adding the following at the end thereof: "If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in

Consultation.

order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.

"(b) Any person who willfully violates, or fails or refuses to comply with, any order issued by the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.". Noncompliance, penalty.

(b) Section 313 of the Clean Air Act is amended by striking out "and" at the end of clause (9) and adding before the period after clause (10): "; and (11) (A) the status of plan provisions developed by States as required under section 110(a)(2)(F)(v), and an accounting of States failing to develop suitable plans; (B) the number of annual incidents of air pollution reaching or exceeding levels determined to present an imminent and substantial endangerment to health (within the meaning of section 303) by location, date, pollution source, and the duration of the emergency; (C) measures taken pursuant to section 110(a)(2)(F)(v), and an evaluation of their effectiveness in reducing pollution; and (D) an accounting of those instances in which an air pollution alert, warning, or emergency is declared as required under regulations of the Administrator and in which no action is taken by either the Administrator, State, or local officials, together with an explanation for the failure to take action". 42 USC 7613. 42 USC 7410. *Ante*, p. 770.

CITIZEN SUITS

SEC. 303. (a) Section 304(a) of the Clean Air Act is amended— 42 USC 7604.

(1) by striking out "or" at the end of paragraph (1) and striking out the period at the end of paragraph (2) and inserting in lieu thereof ", or"; and

(2) by inserting immediately after paragraph (2) the following new paragraph:

"(3) against any person who proposes to construct or constructs any new major emitting facility without a permit required under part C of title I (relating to significant deterioration of air quality) or part D of title I (relating to nonattainment) or who is alleged to be in violation of any condition of such permit.". *Ante*, p. 731. *Ante*, p. 746.

(b) Section 304(f) of such Act is amended by striking out "or" at the end of paragraph (1), striking out the period at the end of paragraph (2) and substituting ", or", and by adding the following new paragraph at the end thereof:

"(3) any condition or requirement of a permit under part C of title I (relating to significant deterioration of air quality) or part D of title I (relating to nonattainment), any condition or requirement of section 113(d) (relating to certain enforcement orders), section 119 (relating to primary nonferrous smelter orders), requirements under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 211 (e) and (f) (relating to fuels and fuel *Ante*, p. 705. *Ante*, pp. 709, 712. *Ante*, p. 762.

Ante, p. 742.
Ante, p. 726.
Ante, pp. 697, 699-701, 703; *Post*, p. 791.
Ante, p. 701, 703; *Post*, p. 796.
42 USC 7604.

additives), or section 169A (relating to visibility protection), any condition or requirement under part B of title I (relating to ozone protection) any requirement under section 111 or 112 (without regard to whether such requirement is expressed as an emission standard or otherwise).".

(c) Section 304(e) of such Act is amended by inserting at the end thereof the following: "Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

"(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

"(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 118.".

Ante, p. 711.
Infra.

(d) Section 307 of such Act, as amended by section 305 of this Act, is amended by adding the following at the end thereof:

"(e) Nothing in this Act shall be construed to authorize judicial review of regulations or orders of the Administrator under this Act, except as provided in this section.".

CIVIL LITIGATION

42 USC 7605.

SEC. 304. (a) Section 305 of the Clean Air Act is amended to read as follows:

"REPRESENTATION IN LITIGATION

"SEC. 305. (a) The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

"(b) In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.".

ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

42 USC 7607.

SEC. 305. (a) Section 307 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(d)(1) This subsection applies to—

"(A) the promulgation or revision of any national ambient air quality standard under section 109,

Ante, p. 691.

"(B) the promulgation or revision of an implementation plan by the Administrator under section 110(c),

Ante, p. 694.

"(C) the promulgation or revision of any standard of performance under section 111 or emission standard under section 112, *Ante*, pp. 697, 699–701, 703;

"(D) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 211, *Post*, p. 791.

"(E) the promulgation or revision of any aircraft emission standard under section 231, *Ante*, pp. 701, 703; *Post*, p. 796.

"(F) promulgation or revision of regulations pertaining to orders for coal conversion under section 113(d)(5) (but not including orders granting or denying any such orders), *Ante*, pp. 762, 764; *Post*, p. 791. *Ante*, p. 769; *Post*, p. 791.

"(G) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 119 (but not including the granting or denying of any such order), *Ante*, p. 705. *Ante*, pp. 709, 712.

"(H) promulgation or revision of regulations under subtitle B of title I (relating to stratosphere and ozone protection), *Ante*, p. 726.

"(I) promulgation or revision of regulations under subtitle C of title I (relating to prevention of significant deterioration of air quality and protection of visibility), *Ante*, p. 731.

"(J) promulgation or revision of regulations under section 202 and test procedures for new motor vehicles or engines under section 206, and the revision of a standard under section 202 (a)(3), *Ante*, p. 702. *Ante*, p. 762. *Ante*, p. 765.

"(K) promulgation or revision of regulations for noncompliance penalties under section 120, *Ante*, p. 714.

"(L) promulgation or revision of any regulations promulgated under section 207 (relating to warranties and compliance by vehicles in actual use), *Ante*, pp. 754–758.

"(M) action of the Administrator under section 126 (relating to interstate pollution abatement), and *Ante*, p. 724.

"(N) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5 of the United States Code.

"(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a 'rule'). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency. Rulemaking docket, establishment.

"(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, United States Code, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the 'comment period'). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of— Publication in Federal Register. Purpose statement, contents.

"(A) the factual data on which the proposed rule is based;

"(B) the methodology used in obtaining the data and in analyzing the data; and

"(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a refer-

ence to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 109(d) and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

Ante, p. 691.

Docket inspection.

"(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

"(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

Hearing, transcript.

"(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

Oral or written submissions.

"(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

Transcript.

Purpose statement.

"(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

"(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

"(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

"(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6). Record.

"(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months. Reconsideration proceeding. Review. Stay.

"(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made. Interlocutory appeals, prohibition.

"(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

"(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

"(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection. Extension.

"(11) The requirements of this subsection shall take effect with

respect to any rule the proposal of which occurs after ninety days after the date of enactment of the Clean Air Act Amendments of 1977.".

Notice and hearing.
42 USC 7405.

(b) Section 105 of such Act is amended by adding the following new subsection at the end thereof:

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

42 USC 7607.

(c)(1) The first sentence of section 307(b)(1) of such Act is amended by striking out "or" after "211," and by inserting after "231" the following: "any rule or order issued under section 120 (relating to noncompliance penalties, any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this Act".

Ante, p. 714

(2) The second sentence of section 307(b)(1) of such Act is amended by inserting after "thereunder," the following: "or any other final action of the Administrator under this Act which is locally or regionally applicable".

Petition, filing.

(3) The last sentence of section 307(b)(1) of such Act is amended to read as follows: "Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise.

(4) Section 307(b)(1) of such Act is further amended by inserting the following after the second sentence thereof: "Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.".

42 USC 7414.

(d)(1) Clause (iii) of section 114(a) of such Act relating to inspection, monitoring, and entry, is amended by striking out "section 119 or 303" and inserting in lieu thereof the following: "any provision of this Act (except with respect to a manufacturer of motor vehicles or motor vehicle engines)".

(2) Section 114(a)(1) of such Act is amended by striking out "the owner or operator of any emission source" and inserting in lieu thereof "any person subject to any requirement of this Act (other than a manufacturer subject to the provisions of section 206(c) or 208)".

(3) Section 114(a)(2)(A) of such Act is amended by striking out "in which an emission source is located" and by inserting in lieu thereof "of such person".

(4) Section 114(a)(2)(B) of such Act is amended by striking out "the owner or operator of such source" and by inserting in lieu thereof "such person".

Regulations.
42 USC 7601.

(e) Section 301 of such Act is amended by inserting "(1)" after "(a)" and by inserting a new paragraph (2) to read:

"(2) Not later than one year after the date of enactment of this paragraph, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers

and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

"(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the Act;

"(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this Act in implementing and enforcing the Act, particularly in the review of new sources and in enforcement of the Act; and

"(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the Act.".

Court costs.

(f) Section 307 of such Act, as amended by section 303(d) of this Act, is amended by adding the following new subsection at the end thereof: *Ante*, p. 772.

"(f) In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.".

Relief.

(g) Section 307 of such Act is amended by adding the following new subsection at the end thereof:

"(g) In any action respecting the promulgation of regulations under section 120 or the administration or enforcement of section 120 no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.". *Ante*, p. 714.

(h) Section 307(b) of such Act is amended by inserting "any order under section 120," after "111(d)". *Ante*, p. 776.

SEWAGE TREATMENT GRANTS

SEC. 306. Title III of the Clean Air Act is amended by striking out section 316 and adding the following new section at the end thereof:

"SEWAGE TREATMENT GRANTS

Construction. 42 USC 7616.

"SEC. 316. (a) No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this Act except as provided in subsection (b).

Restriction.

"(b) The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) only if he determines that—

"(1) such treatment works will not comply with applicable standards under section 111 or 112, *Ante*, pp. 697, 699-701, 703; *Post*, p. 791.

"(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of title I applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction. *Ante*, pp. 701, 703; *Post*, p. 796. Emissions, increase. *Ante*, pp. 731, 746.

"(3) the construction of such treatment works would create new sewage treatment capacity which—

"(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

"(B) would otherwise not be in conformity with the applicable implementation plan, or

"(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of title I applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

Ante, p. 746.

"(c) Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.".

42 USC 4321 note.

ECONOMIC IMPACT ASSESSMENT

Standards or regulations.

SEC. 307. Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"ECONOMIC IMPACT ASSESSMENT

42 USC 7617.

"SEC. 317. (a) This section applies to action of the Administrator in promulgating or revising—

"(1) any new source standard of performance under section 111(b),

Ante, p. 700; *Post*, p. 791.

"(2) any regulation under section 111(d),

Ante, p. 699.

"(3) any regulation under part B of title I (relating to ozone and stratosphere protection),

Ante, p. 726.

"(4) any regulation under part C of title I (relating to prevention of significant deterioration of air quality),

Ante, pp. 702, 751–753, 758–761, 765, 767, 769; *Post*, p. 791.

"(5) any regulation establishing emission standards under section 202 and any other regulation promulgated under that section,

Post, p. 791.

"(6) any regulation controlling or prohibiting any fuel or fuel additive under section 211(c), and

Ante, p. 769; *Post*, p. 791.

"(7) any aircraft emission standard under section 231.

Publication in Federal Register.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after the date of enactment of this section. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

"(b) Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 307(d)(2) and shall be available to the public as provided in section 307(d)(4). Notice of proposed rulemaking shall include notice of such availability together

Ante, p. 772.

with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a). Each such explanation shall be part of the statements of basis and purpose required under sections 307(d)(3) and 307(d)(6).

Ante, p. 772.

"(c) Subject to subsection (d), the assessment required under this section with respect to any standard or regulation shall contain an analysis of— Analysis.

"(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

"(2) the potential inflationary or recessionary effects of the standard or regulation;

"(3) the effects on competition of the standard or regulation with respect to small business;

"(4) the effects of the standard or regulation on consumer costs; and

"(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any action referred to in subsection (a).

"(d) The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this Act.

"(e) Nothing in this section shall be construed—

"(1) to alter the basis on which a standard or regulation is promulgated under this Act;

"(2) to preclude the Administrator from carrying out his responsibility under this Act to protect public health and welfare; or

"(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.

"(f) The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 304(a)(2), relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 304(a)(2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

42 USC 7604.
Court order.
Violation, penalties.

"(g) In the case of any provision of this Act in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.".

FINANCIAL DISCLOSURE; CONFLICTS OF INTEREST

SEC. 308. Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"FINANCIAL DISCLOSURE; CONFLICTS OF INTEREST

Statement, filing.
42 USC 7618.

"SEC. 318. (a) Each person who—

"(1) has any known financial interest in (A) any person subject to this Act, or (B) any person who applies for or receives any grant, contract, or other form of financial assistance pursuant to this Act, and

"(2) is (A) an officer or employee of the Environmental Protection Agency who performs any function of duty under this Act, (B) a member of the National Commission on Air Quality appointed as a member of the public, or (C) a member of the scientific review committee under section 109(d)

Ante, p. 691.

shall, beginning six months after the date of enactment of this section, annually file with the Administrator a written statement concerning all such interests held by such officer, employee, or member during the preceding calendar year. Such statement shall be available to the public.

Availability to public.

"(b) The Administrator shall—

"(1) act within ninety days after the date of enactment of the Clean Air Act Amendments of 1977—

Known financial interest, definition requirement. Review.

"(A) to define the term 'known financial interest' for purposes of subsection (a) of this section;

"(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers, employees and members of such statements and the review by the Administrator (or the Commission in the case of members of the Commission) of such statements; and

Annual report to Congress.

"(2) report to the Congress on June 1 of each calendar year with respect to such statements to the Administrator and the actions taken in regard thereto during the preceding calendar year.

"(c) After the date one year after the date of the enactment of this section, no person who—

"(1) is employed by, serves as attorney for, acts as a consultant for, or holds any other official or contractual relationship to—

"(A) the owner or operator of any major stationary source or any stationary source which is subject to a standard of performance or emission standard under section 111 or 112,

Ante, pp. 697, 699, 701, 703; *Post*, p. 791.

"(B) any manufacturer of any class or category of mobile sources if such mobile sources are subject to regulation under this Act,

Ante, pp. 701, 703; *Post*, p. 796.

"(C) any trade or business association of which such owner or operator referred to in subparagraph (A) or such manufacturer referred to in subparagraph (B) is a member or

"(D) any organization (whether or not nonprofit) which is a party to litigation, or engaged in political, educational, or informational activities, relating to air quality, or

"(2) owns, or has any financial interest in, any stock, bonds, or other financial interest which ownership or interest may be inconsistent with a position as an officer or employee of the Environ-

mental Protection Agency, as determined under regulations of the Administrator,

may concurrently serve as such an officer or employee of the Environmental Protection Agency.

"(d) The Administrator shall promulgate rules for purposes of subsections (b) and (c) which— Rules.

"(1) identify specific offices or positions within such agency which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section, and Exemption.

"(2) identify the ownership or financial interests which may be inconsistent with particular regulatory or policymaking offices or positions within the Environmental Protection Agency.

"(e) Any officer or employee of the Environmental Protection Agency or member of the National Commission on Air Quality or of the scientific review committee under section 109(d) who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both. Penalty. *Ante*, p. 691.

"(f) Nothing in this section shall be construed to affect or impair any other Federal statutory requirements respecting disclosure or conflict of interest applicable to the Environmental Protection Agency. Subsections (c) and (d) of this section shall not apply after the effective date of any such requirements respecting conflicts of interest which are generally applicable to departments, agencies, and instrumentalities of the United States.".

AIR QUALITY MONITORING BY ENVIRONMENTAL PROTECTION AGENCY

SEC. 309. Title III of the Clean Air Act is amended by adding the following new section at the end thereof: Notice and hearing. Regulations.

"AIR QUALITY MONITORING

"SEC. 319. Not later than one year after the date of enactment of the Clean Air Act Amendments of 1977 and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which— 42 USC 7619.

"(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

"(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

"(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

"(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data. Recordkeeping. Report to public.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air Operation.

quality monitoring system required under any applicable implementation plan under section 110 shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.".

Ante, pp. 691-696.

MODELING

Conference.

SEC. 310. Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"STANDARDIZED AIR QUALITY MODELING

42 USC 7620.

"SEC. 320. (a) Not later than six months after the date of the enactment of the Clean Air Act Amendments of 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of title I (relating to prevention of significant deterioration of air quality).

Ante, p. 731.

"(b) The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation; the National Oceanic and Atmospheric Administration, and the National Bureau of Standards.

Transcript.

"(c) Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

"(d) The comments submitted and the transcript maintained pursuant to subsection (c) shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under part C of title I.".

EMPLOYMENT EFFECTS

Evaluations

SEC. 311. Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"EMPLOYMENT EFFECTS

42 USC 7621.

"SEC. 321. (a) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this Act and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

Investigation request.

"(b) Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this Act, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

Hearings.

Record.

Information, availability to public.

"(c) In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 119 (relating to primary nonferrous smelter orders), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Subpenas. *Ante*, pp. 709, 712.

Confidential information.

Witnesses fees.

Penalty.

"(d) Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this Act.".

EMPLOYEE PROTECTION

SEC. 312. Title III of the Clean Air Act is amended by adding at the end thereof the following new section:

"EMPLOYEE PROTECTION

"SEC. 322. (a) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensa-

42 USC 7622.

tion, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

"(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or a proceeding for the administration or enforcement of any requirement imposed under this Act or under any applicable implementation plan,

"(2) testified or is about to testify in any such proceeding, or

"(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

Complaint, filing. "(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

Notice.

Investigation. "(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

Order.

Notice and hearing.

"(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

Review, petition. "(c)(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5

of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order. 5 USC 701. Stay.

"(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

"(d) Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Jurisdiction.

"(e)(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order. Final order.

"(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate. Court costs.

"(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

"(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this Act.".

NATIONAL COMMISSION ON AIR QUALITY

SEC. 313. Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"NATIONAL COMMISSION ON AIR QUALITY

"SEC. 323. (a) There is established a National Commission on Air Quality which shall study and report to the Congress on— Establishment. 42 USC 7623. Study. Report to Congress. Contents.

"(1) available alternatives, including enforcement mechanisms to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and to achieve the other purposes of the Act, including achievement and maintenance of national ambient air quality standards and in accordance with subsection (b)(2) of this section the prevention of significant deterioration of air quality;

"(2) the economic, technology, and environmental consequences of achieving or not achieving the purposes of this Act and programs authorized by it;

"(3) the technological capability of achieving and the economic, energy, and environmental and health effects of achieving or not achieving required emission control levels for mobile sources of oxides of nitrogen in relation to and independent of regulation of emissions of oxides of nitrogen from stationary sources;

"(4) air pollutants not presently regulated, which pose or may in the future pose a threat to public health or public welfare and options available to regulate emissions of such pollutants;

"(5) the adequacy of research, development, and demonstrations being carried out by Federal, State, local, and nongovernmental entities to protect and enhance air quality;

"(6) the ability of (including financial resources, manpower, and statutory authority) Federal, State, and local institutions to implement the purposes of the Act;

"(7) the extent to which the reduction of hydrocarbon emissions is an adequate or appropriate method to achieve primary standards for photochemical oxidants. Such study shall include—

"(A) a description and analysis of the various pollutants which are commonly referred to as 'photochemical oxidants' or chemical precursers to photochemical oxidants;

"(B) an analysis of any pollutants or combination of pollutants which need to be reduced to achieve any photochemical oxidant standard, and the amount of such reduction;

"(C) the relationship between the reductions of hydrocarbons, oxides of nitrogen, and any other pollutants and the achievement of applicable standards for photochemical oxidants;

"(D) the degree to which background or natural sources and long-range transportation of pollutants contribute to measured ambient levels of photochemical oxidants;

"(E) any other oxidant-related issues which the Commission determines to be appropriate; and

"(8)(A) the special problems of small businesses and government agencies in obtaining reductions of emissions from existing sources in order to offset increases in emissions from new sources for the purposes of this Act; and

"(B) alternative strategies for permitting, without impeding the achievement of national ambient air quality standards as expeditiously as possible, the construction of new facilities and the modification of existing facilities in air quality control regions exceeding the national ambient air quality standard for any pollutant regulated under the Act.

The Commission's study and report under paragraph (4) shall include analysis of the health effects of pollutants which are derivates of oxides of nitrogen.

"(b)(1) Studies and investigations conducted pursuant to subsection (a) shall include the effects of existing or proposed national ambient air quality standards on employment, energy, and the economy (including State and local), their relationship to objective scientific and medical data collected to determine their validity at existing levels, as well as their other social and environmental effects.

"(2) The Commission shall, in carrying out the study authorized under this section, give priority to a study of the implementation of the provisions of part C of this Act (relating to prevention of significant deterioration of air quality) and its effects on the States and the Federal Government. In carrying out such study, the Commission shall study, among other questions, the following:

Ante, p. 731.

"(A) whether the provisions relating to the designation of, and protection of air quality in class I areas under part C are appropriate to protect the air quality over lands of special national significance, including recommendations for, and methods to (i) add to or delete lands from such designation, and (ii) provide appropriate protection of the air quality over such lands;

"(B) whether the provisions of part C, including the three-

hour and twenty-four-hour increments, (i) affect the location and size of major emitting facilities, and (ii) whether such effects are in conflict or consonance with other national policies regarding the development of such facilities;

"(C) whether the technology is available to control emissions from the major emitting facilities which are subject to regulation under part C, including an analysis of the costs associated with that technology; *Ante*, p. 731.

"(D) whether the exclusion of nonmajor emitting sources from the regulatory framework under this Act will affect the protection of air quality in class I and class II regions designated under this Act;

"(E) whether the increments of change of air quality under this Act are appropriate to prevent significant deterioration of air quality in class I and class II regions designated under part C of title I;

"(F) whether the choice of predictive air quality models and the assumptions of those models are appropriate to protect air quality in the class I and class II regions designated under part C of title I for the pollutants subject to regulation under part C; and

"(G) the effects of such provisions on employment, energy, the economy (including State and local), the relationship of such policy to the protection of the public health and welfare as well as other national priorities such as economic growth and national defense, and its other social and environmental effects.

"(c) The Commission shall, as a part of any study conducted under subsection (b)(2) of this section, specifically identify any loss or irretrievable commitment of resources (taking into account feasibility), including mineral, agricultural and water resources, as well as land surface-use resources.

Members, appointment and confirmation.

"(d) Such Commission shall be composed of eleven members, including the chairman and the ranking minority member of the Senate Committee on Public Works and the House Committee on Interstate and Foreign Commerce (or delegates of such chairmen or member appointed by them from among representatives of such committees) and seven members of the public appointed by the President, by and with the advice and consent of the Senate. The chairman of the Commission shall be elected from among the members thereof. Not more than one-third of the members of the Commission may have any interest in any business or activity regulated under this Act.

Chairman.

Executive branch, cooperation.

"(e) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

Report, submittal to Congress.

"(f) A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning subsection (a)(3) of this section no later than March 1, 1978, and the results of the investigation and study concerning subsection (b)(2) of this section no later than two years after the date of enactment of the Clean Air Act Amendments of 1977. A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning paragraphs (3) and (8) of subsection (a) of this section no later than

March 1, 1978, in order that Congress may have this information in a timely fashion if it deems further changes are needed in the requirements for control of emissions of oxides of nitrogen under this Act, and for other purposes. The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the same matters required to be studied by the Commission under subsection (b)(2) and to submit such study to the Congress at the same time as required for the report of the Commission concerning such subsection. Funds shall be available in the same manner, and the Administrator shall have the same authorities and duties respecting such study, as provided in the case of the study authorized pursuant to section 202(c).

Study.

Funds, availability.

42 USC 7521.

"(g) A report shall be submitted with regard to all Commission studies and investigations other than those referred to in subsection (f), together with any appropriate recommendations, not later than three years after the date of enactment of this section. Upon submission of such report or upon expiration of such three-year period, whichever is sooner, the Commission shall cease to exist. The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of title V of the United States Code, including travel-time and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

Report.

Compensation and travel expenses.

5 USC 5332 note.

5 USC 5703, 5707.

Hearings.

"(j) In the conduct of the study, the Commission is authorized to contract with nongovernmental entities that are competent to perform research or investigations in areas within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation. The Commission may contract with nonprofit technical and scientific organizations, including the National Academy of Sciences, for the purpose of developing necessary technical information for the study authorized by subsection (a)(7) of this section.".

VAPOR RECOVERY

SEC. 314. (a) Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"COST OF EMISSION CONTROL FOR CERTAIN VAPOR RECOVERY TO BE BORNE BY OWNER OF RETAIL OUTLET

42 USC 7624.

"SEC. 324. (a) The regulations under this Act applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b), such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after the date of enactment of the Clean Air Act Amendments of 1977 may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment

may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

"(b) The regulations of the Administrator referred to in subsection (a) shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.". Payment.

(b) Title III of such Act is amended by adding the following new section at the end thereof:

"VAPOR RECOVERY FOR SMALL BUSINESS MARKETERS OF PETROLEUM PRODUCTS

"SEC. 325. (a) The regulations under this Act applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have— 42 USC 7625.

"(1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

"(2) 66 percent at the end of such second year, and

"(3) 100 percent at the end of the third year.

"(b) Nothing in subsection (a) shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

"(c) For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 324 of this Act or under regulations of the Administrator, unless such person— Small business marketer. *Ante*, p. 788.

"(1) (A) is a refiner, or

"(B) controls, is controlled by, or is under common control with, a refiner,

"(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

"(2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

Definitions.

For the purpose of this section, the term 'refiner' shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, 'control' of a corporation means ownership of more than 50 percent of its stock.".

AUTHORIZATIONS

SEC. 315. Title III of the Clean Air Act is amended by adding the following new section at the end thereof:

"APPROPRIATIONS

42 USC 7626.

SEC. 325. (a) There are authorized to be appropriated to carry out this Act (other than provisions for which amounts are authorized under subsection (b)), $200,000,000 for the fiscal year 1978 and for each of the three fiscal years beginning thereafter.

"(b)(1) There are authorized to be appropriated to carry out section 175 beginning in fiscal year 1978, $75,000,000 to be available until expended.

Ante, p. 749.

"(2) There are authorized to be appropriated for use in carrying out section 323 (relating to National Commission on Air Quality), not to exceed $10,000,000 beginning in fiscal year 1978. For the study authorized under section 323 there shall be made available by contract to the National Commission on Air Quality from the appropriation to the Environmental Protection Agency for fiscal year 1977 the sum of $1,000,000.

Ante, p. 785.

"(3) There are authorized to be appropriated to carry out section 127 (relating to grants for public notification) $4,000,000 for the fiscal year 1978 and each of the three succeeding fiscal years.

Ante, p. 725.

"(4) For purposes of section 103(b)(5), there are authorized to be appropriated $7,500,000 for the fiscal year 1978 and each of the three fiscal years beginning after the date of enactment of the Clean Air Act Amendments of 1977.

Ante, p. 686.

"(5) For the purpose of carrying out the provisions of part B of title I relating to studies and reports, there are authorized to be appropriated—

Ante, p. 726.

"(A) to the National Aeronautics and Space Administration, the National Science Foundation, and the Department of State, such sums as may be necessary for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978;

"(B) to the Environmental Protection Agency, $157,000,000 for fiscal year 1978; and

"(C) to all other agencies such sums as may be necessary.

"(6) There are authorized to be appropriated for carrying out research, development and demonstration under sections 103 and 104 of this Act $120,000,000 for fiscal year 1978.".

Ante, pp. 686, 687.

42 USC 7404.

TITLE IV—GENERAL AND MISCELLANEOUS PROVISIONS

BASIS OF ADMINISTRATIVE STANDARDS

42 USC 7408.

SEC. 401. (a) Section 108(a)(1)(A) of the Clean Air Act is amended to read as follows:

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

(b) The second sentence of section 111(b)(1)(A) of such Act is amended to read as follows: "He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.". 42 USC 7411.

(c) Paragraph (1) of section 112(a) of such Act is amended to read as follows: "Hazardous air pollutant." 42 USC 7412.

"(1) The term 'hazardous air pollutant' means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.".

(d)(1) Section 202(a)(1) of such Act is amended to read as follows: Regulations. 42 USC 7521.

"(a)(1) Except as otherwise provided in subsection (b) the Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.".

(2) Section 202(e) of such Act is amended by striking out "which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers" and substituting "which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger".

(e) Section 211(c)(1)(A) of such Act is amended to read as follows: "(A) if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare, or". 42 USC 7545.

(f) Section 231(a)(2) of such Act is amended to read as follows: 42 USC 7571.

"(2) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.".

INTERAGENCY COOPERATION ON PREVENTION OF ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

SEC. 402. (a) Not later than three months after the date of enactment of this section, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the 'Task Force'). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate). Task Force on Environmental Cancer and Heart and Lung Disease. Establishment. 42 USC 4362. Members.

(b) The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health, Education, and Welfare, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

Report to Congress.

(5) report to Congress, not later than one year after the date of enactment of this section and annually thereafter, on the problems and progress in carrying out this section.

STUDIES

Report to Congress. 42 USC 7548 note.

SEC. 403. (a) Not later than eighteen months after the date of the enactment of this Act, the Administrator of the Environmental Protection Agency, in cooperation with the National Academy of Sciences, shall study and report to Congress on (1) the relationship between the size, weight, and chemical composition of suspended particulate matter and the nature and degree of the endangerment to public health or welfare presented by such particulate matter (especially with respect to fine particulate matter) and (2) the availability of technology for controlling such particulate matter.

Report to Congress. 42 USC 7401 note.

(b) The Administrator of the Environmental Protection Agency shall conduct a study and report to the Congress not later than January 1, 1979, on the effects on public health and welfare of odors or odorous emissions, the sources of such emissions, the technology or other measures available for control of such emissions and the costs of such technology or measures, and the costs and benefits of alternative measures or strategies to abate such emissions. Such report shall include an evaluation of whether air quality criteria or national ambient air quality standards should be published under the Clean Air Act for odors, and what other strategies or authorities under the Clean Air Act are available or appropriate for abating such emissions.

Evaluation.

42 USC 7401 note.

Chemical contaminants list, publication. 42 USC 7401 note.

(c)(1) Not later than twelve months after the date of enactment of this Act the Administrator of the Environmental Protection Agency shall publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue. Such list shall be prepared for the United States and shall indicate the approximate number of cases, the range of levels found, and the mean levels found.

Explanation, publication.

(2) Not later than eighteen months after the date of enactment of this Act the Administrator shall publish in the same manner an explanation of what is known about the manner in which the chemicals described in paragraph (1) entered the environment and thereafter human tissue.

(3) The Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, shall, if feasible, conduct an epidemiological study to demonstrate the rela-

tionship between levels of chemicals in the environment and in human tissue. Such study shall be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas. The results of such study shall, as soon as practicable, be reported to the appropriate committee of the Congress.

Report to congressional committee.

(d) The Administrator of the Environmental Protection Agency shall conduct a study of air quality in various areas throughout the country including the gulf coast region. Such study shall include analysis of liquid and solid aerosols and other fine particulate matter and the contribution of such substances to visibility and public health problems in such areas. For the purposes of this study, the Administrator shall use environmental health experts from the National Institutes of Health and other outside agencies and organizations.

42 USC 7401 note.

(e)(1) The Secretary of Labor, in consultation with the Administrator, shall conduct a study of potential dislocation of employees due to implementation of laws administered by the Administrator. Such study shall estimate the number of employees so affected, identify existing sources of assistance available to such employees, assess the adequacy of such assistance, and recommend additional adjustment measures, if justified.

42 USC 7621 note.

(2) The Secretary shall submit to Congress the results of the study conducted under paragraph (1) not more than one year after the date of enactment of this section.

Study results, submittal to Congress.

(f) The Administrator of the Environmental Protection Agency shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 202(a) of the Clean Air Act (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 202(b) of such Act. The Administrator shall report to the Congress within six months of the date of enactment of this section and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph.

42 USC 7521 note.

Ante, pp. 759, 760, 765, 791.

Report to Congress.

(g) The Administrator of the Environmental Protection Agency shall conduct a study and report to Congress by the date one year after the date of the enactment of this section, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines. Such study and report shall include but not be limited to a review of the effects of such emissions on public health and welfare and an analysis of the costs and benefits of alternatives to reduce or eliminate such emissions (including desulfurization of fuel, short-term allocation of low sulfur crude oil, technological devices used in conjunction with current engine technologies, alternative engine technologies, and other methods) as may be required to achieve any proposed or promulgated emission standards for sulfur compounds.

Report to Congress.
42 USC 7521 note.

RAILROAD EMISSION STUDY

SEC. 404. (a) The Administrator of the Environmental Protection Agency shall conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine—

42 USC 7401 note.

(1) the extent to which such emissions affect air quality in air quality control regions throughout the United States,

(2) the technological feasibility and the current state of technology for controlling such emissions, and

(3) the status and effect of current and proposed State and local regulations affecting such emissions.

Report to congressional committees.

(b) Within one hundred and eighty days after commencing such study and investigation, the Administrator shall submit a report of such study and investigation, together with recommendations for appropriate legislation, to the Senate Committee on Environment and Public Works and the House Committee on Interstate and Foreign Commerce.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

42 USC 7401 note.

SEC. 405. (a) The Administrator, in conjunction with the Council of Economic Advisors (hereinafter in this section referred to as 'the Council'), shall undertake a study and assessment of economic measures for the control of air pollution which could—

(1) strengthen the effectiveness of existing methods of controlling air pollution,

42 USC 7401 note.

(2) provide incentives to abate air pollution to a greater degree than is required by existing provisions of the Clean Air Act (and regulations thereunder), and

(3) serve as the primary incentive for controlling air pollution problems not addressed by any provision of the Clean Air Act (or any regulation thereunder).

(b) The study of measures referred to in paragraph (1) of subsection (a) shall concentrate on (1) identification of air pollution problems for which existing methods of control are not effective because of economic incentives to delay compliance and (2) formulation of economic measures which could be taken with respect to each such air pollution problem which would provide an incentive to comply without interfering with such existing methods of control.

(c) The study of measures referred to in paragraph (2) of subsection (a) shall concentrate on (1) identification of air pollution problems for which existing methods of control may not be sufficiently extensive to achieve all desired environmental goals and (2) formulation of economic measures for each such air pollution problem which would provide additional incentives to reduce air pollution without—

(A) interfering with the effectiveness of existing methods of control, or

(B) creating problems similar to those which prevent alternative regulatory methods from being used to reach such environmental goals.

(d) The study of the measures referred to in paragraph (3) of subsection (a) shall concentrate on (1) identification of air pollution problems for which no existing methods of control exist, (2) formulation of economic measures to reduce such pollution, and (3) comparison of the environmental and economic impacts of the economic measures with those of any alternative regulatory methods which can be identified.

(e) In conducting the study under this section, a preliminary screening should be made of the problems referred to in subsections (b)(1), (c)(1), and (d)(1) and economic measures should be formulated under subsections (b)(2), (c)(2), and (d)(2) in the most promising cases, giving special attention to structural and administra-

tive problems. In formulating any such measure which provides for a charge, the appropriate level of the charge should be determined, if possible, and the environmental and economic impacts should be identified.

(f) Within one year after the date of enactment of this Act, the Administrator shall complete a study and report to the Congress on the advantages and disadvantages (including an analysis of the feasibility) of establishing a system of penalties for stationary sources on emissions of oxides of nitrogen and make recommendation regarding the establishment of such a system. Such study shall determine if such a system will effectively encourage the development of more effective systems and technologies for control of emissions of oxides of nitrogen for new major emitting facilities, or existing major emitting facilities, or both. In any case in which a proposed penalty system is recommended by the Administrator, the report should include— Report to Congress.

(1) a recommendation respecting the appropriate period during which such system of penalties should apply, and the appropriate termination date or dates for such system, if any, taking into account—

(A) the time at which adequate technology may reasonably be anticipated to be available to control oxides of nitrogen for that category of facilities,

(B) the degree to which such technology can be expected to be used on such facilities, and

(C) the Administrator's authorities to require the use of such technology, and

(2) recommendations respecting the compilation of records by facilities subject to such penalties for purposes of determining the applicability and amount of such penalty.

(g) Not later than two years after the date of the enactment of this section, the Administrator and the Council shall conclude the study and assessment under this section and submit a report containing the results thereof to the President and to the Congress. Interim reports on specific pollution problems and solutions recommended shall be made available to the President and the Congress by the Administrator whenever available. Report to President and Congress. Interim reports to President and Congress.

SAVING PROVISION; EFFECTIVE DATES

SEC. 406. (a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act shall abate by reason of the taking effect of the amendments made by this Act. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee. 42 USC 7401 note. 42 USC 7401 note.

(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act as in effect immediately prior to the date of enactment of this Act, and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and

42 USC 7401 note.

not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act.

Ante, pp. 691-696.

(c) Nothing in this Act nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of this Act or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section until modified or rescinded in accordance with the Clean Air Act as amended by this Act.

Effective date.

(d)(1) Except as otherwise expressly provided, the amendments made by this Act shall be effective on date of enactment.

Plan revision.

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

(A) one year after the date of enactment of this Act, or

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

Approved August 7, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-294 (Comm. on Interstate and Foreign Commerce) and No. 95-564 (Comm. of Conference).

SENATE REPORT No. 95-127 accompanying S. 252 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 123 (1977):

May 24-26, considered and passed House.

June 8, 10, considered and passed Senate, amended.

Aug. 4, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 33:

Aug. 8, Presidential statement.