Act of 1976; to the Committee on Ways and Means.

By Mr. TEAGUE (for himself, Mr. BRADEMAS, Mr. WYDLER, Mr. FUQUA, Mr. WINN, Mr. FREY, Mr. GOLDWATER, Mr. MCCORMACK, Mr. BROWN of California, Mr. FISH, Mr. LUJAN, Mr. THORNTON, Mr. SCHEUER, Mr. HOLLENBECK, Mr. OTTINGER, Mr. RUDD, Mr. HARKIN, Mr. LLOYD of California, Mr. WALKER, Mr. AMBRO, Mr. KRUEGER, Mrs. LLOYD of Tennessee, Mr. BLANCHARD, and Mr. WIRTH):

H.R. 7735. A bill to authorize Federal assistance to private, profitmaking agencies and organizations under title II of the Rehabilitation Act of 1973; to the Committee on Education and Labor.

By Mr. TEAGUE (for himself, Mr. BRADEMAS, Mr. NEAL, Mr. DOWNEY, Mr. WALGREN, Mr. FLIPPO, Mr. GORE, and Mr. WATKINS):

H.R. 7736. A bill to authorize Federal assistance to private, profitmaking agencies and organizations under title II of the Rehabilitation Act of 1973; to the Committee on Education and Labor.

By Mr. SIKES:

H.J. Res. 511. Joint resolution to authorize and request the President to issue a proclamation designating the last week in August of each year as National Grade Crossing Safety Week; to the Committee on Post Office and Civil Service.

By Mr. WIRTH (for himself, Mr. WHALEN, Mr. OTTINGER, Mr. BADILLO, Mr. BEILENSON, Mr. DELLUMS, Mr. EDWARDS of California, and Mr. ROYBAL):

H.J. Res. 512. Joint resolution providing that competition is reaffirmed as the best means of serving American consumers, telecommunications needs; to the Committee on Interstate and Foreign Commerce.

By Mrs. FENWICK (for himself and Mr. HOWARD):

H. Con. Res. 246. Concurrent resolution to express the commitment of the American people to human rights and a thorough discussion of all violations of the Helsinki Final Act at the Belgrade Conference on European Security and Cooperation; to the Committee on International Relations.

By Mr. MINISH:

H. Con. Res. 247. Concurrent resolution to express the commitment of the American people to human rights and a thorough discussion of all violations of the Helsinki Final Act at the Belgrade Conference on European Security and Cooperation; to the Committee on International Relations.

By Mr. ANDERSON of Illinois (for himself, Mr. FISHER, Mr. BEDELL, Mr. EVANS of Delaware, Mr. LEACH, Mr. MCCORMACK, Mr. NOLAN, Mr. RICHMOND, and Mr. WIRTH):

H. Res. 623. Resolution to permit all employees of the House of Representatives to contribute through payroll withholdings, to charitable organizations in coordination with the Combined Federal Campaign and other fundraising in the executive branch of the Federal Government; to the Committee on House Administration.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

183. By the SPEAKER: Memorial of the Legislature of the State of Tennessee, requesting that Congress call a convention for the purpose of proposing an amendment to the Constitution of the United States requiring the balancing of the Federal budget; to the Committee on the Judiciary.

184. Also, memorial of the Legislature of the State of Tennessee, requesting that Congress call a convention for the purpose of proposing an amendment to the Constitution of the United States relating to terms of office of Federal judges; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

124. The SPEAKER presented a petition of Joseph Theodore, Jr., New Bedford, Mass., relative to Flag Day and National Flag Week, 1977, which was referred to the Committee on Post Office and Civil Service.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3

By Mr. SCHEUER:

Page 103, add after line 26 the following new section:

DELAY IN IMPOSITION, AND WAIVER CONCERNING MONETARY REDUCTION FOR STATE'S FAILURE TO PERFORM MEDICAID UTILIZATION REVIEW

SEC. 21. Section 1903(g) of the Social Security Act is amended by adding after paragraph (2) the following new paragraph:

"(3) Notwithstanding paragraph (1)—

"(A) any decrease in the Federal medical assistance percentage of a State otherwise required to be imposed with respect to any calendar quarter ending before January 1, 1978, shall not be imposed before January 1, 1978, and

"(B) the Secretary shall waive application of all or such part of a decrease for a State with respect to any calendar quarter ending before January 1, 1978, if the State makes a satisfactory showing, in accordance with paragraph (1), with respect to the calendar quarter ending on [December 31, 1977].".

H.R. 7553

By Mr. ROONEY:

On page 5, line 24, strike out "$1,512,072,000" and insert in lieu thereof, "$1,510,572,000".

On page 6, line 11, strike the period and add immediately thereafter the following: ": *Provided further*, That no part of the funds herein appropriated shall be available for land acquisition for or construction of the Trexler Lake Project in Pennsylvania."

By Mr. RUNNELS:

On page 12, line 13, strike "$100,051,000" and insert in lieu thereof "$100,201,000" and strike the period on line 13 and insert the following: ": *Provided*, That the $50,000,000 is for the continued planning of Hooker Dam under the Central Arizona Project.".

H.R. 7555

By Mr. ALLEN:

Delete the period at the end of section 209, General Provisions, on page 40, line 2, and substitute a comma therefor, followed by the following new language, to wit: "or where the fetus is the result of a rape, or where the fetus is the result of incestuous relations between a minor or teenage child or woman and a male relative, or where the pregnant woman or minor child suffers from congenital insanity, or where a pregnant child or woman is under the age of twenty and unmarried, or where the pregnant woman is physically handicapped to a severe degree or is suffering from an addiction or a pharmacological imbalance which could be transmitted to the fetus, or where a pregnant child or woman suffers from any serious disease which can be inherited by the child, or where the mental or emotional condition of the pregnant woman is such as to render her incapable of furnishing proper care to a child, or where such woman has demonstrated serious destructive tendencies which would endanger the welfare of her child."

SENATE—*Friday, June 10, 1977*

(Legislative day of Wednesday, May 18, 1977)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. METCALF).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

Almighty God, unto whom all hearts are open, all desires known, and from whom no secrets are hid, cleanse the thoughts of our hearts by the inspiration of Thy Holy Spirit, that we may perfectly love Thee, and worthily magnify Thy holy name in all we say and do in this place; through Christ our Lord. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of yesterday, Thursday, June 9, 1977, be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, on the Executive Calendar there are a few nominations that are ready to go, beginning with the Civil Aeronautics Board.

I ask unanimous consent that the Senate go into executive session to consider the nominations beginning with Civil Aeronautics Board.

Mr. BAKER. Mr. President, reserving the right to object, and of course, I will not object, because the majority leader is entirely right, the Executive Calendar is cleared on our side. I might say for the information of the Senate what my colleague, the majority leader, already knows, and that is, we have cleared that nomination under the category of Agency for International Development, as well as the single nomination under the Civil

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Aeronautics Board, and those nominations placed on the Secretary's desk in the Public Health Service.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations will be stated.

CIVIL AERONAUTICS BOARD

The second assistant legislative clerk read the nomination of Alfred Edward Kahn, of New York, to be a member of the Civil Aeronautics Board for the term of 6 years expiring December 31, 1982.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE PUBLIC HEALTH SERVICE

The second assistant legislative clerk proceeded to read sundry nominations placed on the Secretary's desk in the Public Health Service.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations placed on the Secretary's desk in the Public Health Service be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate resume legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees be permitted to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I have no further need for my time.

DEFENSE OF KOREA

Mr. BAKER. Mr. President, I want to serve notice of my concern over President Carter's plans to withdraw U.S. ground troops from the Korean peninsula. I do not believe the President and his administration have fully considered the national security implications of its Korean policy.

President Carter, while a candidate last year, announced that, if elected, he would withdraw American troops from Korea. That proposal was made before Mr. Carter had the benefit of the counsel of the Joint Chiefs of Staff or the National Security Council; and I question whether the administration's plan for withdrawing from Korea adequately provides for our national security.

The Korean peninsula is proximate to three major powers: Japan, China, and Russia; and it is, consequently, of great strategic importance to those powers and to the United States. For this reason, any change in our Korean policy should be subjected to an intensive review by the Defense Department, the State Department, and the U.S. Senate. This has not taken place. For instance, recent testimony in the House has indicated that the military was not consulted on the merits of the withdrawal policy, but merely asked to bring it about.

We are withdrawing from Korea on the basis of a campaign promise, and not a careful and comprehensive review by the U.S. Government.

I believe that withdrawing our ground forces, without countervailing moves by the North Koreans, will create uncertainty throughout free Asia, stimulate regional tensions and risk a major outbreak of hostilities on the Korean peninsula.

Given the present military balance between the two Koreas, the trends in their relative defense spending; the commitment of the North Koreans to forceful reunification; the lack of a responsible outside power capable of restraining the North; and the inherent difficulties of defending against an enemy positioned so close to vital target areas, this is not the time to reduce our commitment on the Korean peninsula.

Because of the serious national security implications and the lack of a thorough and governmentwide review, it would be unwise and inappropriate for the Senate at this point to affirm a Korean withdrawal policy. Since this is what the Senate is being asked to do by section 454 of H.R. 6689, the Foreign Relations Authorization Act, it is my intention when this legislation is considered by the Senate to offer an amendment to delete section 454. My amendment will provide the Senate with a proper opportunity to fully assess the impact of any proposed changes in our Korean policy.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I have no requests for my time. I understand the distinguished junior Senator from Oklahoma has a special order of 15 minutes and I inquire if he desires any further time, any part of my time.

Mr. BARTLETT. No.

Mr. BAKER. I understand he does not. Therefore, I yield back the remainder of my time under the standing order.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized for not to exceed 15 minutes.

The Senator from Oklahoma.

SNOWING THE CONSUMER ONE MORE TIME

Mr. BARTLETT. Mr. President, many agencies of the Federal Government, as well as many State governments, have been involved for years in developing laws to protect the consumer from abuses by business. These laws and regulations have stopped abuses in some instances, but in some cases the laws and regulations themselves have become abusive. These laws have often resulted in more government, higher costs to every consumer, and sometimes without protecting anyone, save perhaps those who are hired to write, interpret, analyze, and enforce the multitude of restrictions contained in the laws and regulations. This state of affairs is not in the interest of any consumer. It is not in the interest of the citizens of the country.

Instead of doing things the people want, the people believe things are being done to them which they do not want—at cost to the citizen of more taxes, more debt, and more inflation.

In many cases, consumer protection laws are administered by Federal departments or agencies headed by Cabinet officers or other officials who are responsible directly to the President. If those departments or agencies are ignoring "consumer" needs, then it is the President's responsibility to build a fire under his appointees and get them back to work. If an independent agency is ignoring "consumer" needs, then the President and Congress can similarly remedy that problem by the quality of appointments to the governing boards of those agencies.

I believe that the present proposal for the creation of an Agency for Consumer Advocacy is yet another example of useless bureaucracy being created in the name of "consumerism." I hope that those of us in this Congress will recognize that fact, and in so doing, prevent the continued snow job of the American public that proposals of this sort represent.

Mr. President, I use the term "snow job" advisedly. Those who suggest that a single agency or a single person can represent "consumers" are selling those consumers a bill of goods. In my judgment, this assumption is the basic fallacy that underlies proposals for the establishment of an Agency for Consumer Advocacy.

We should recognize at the outset that the "consumers" in this country also happen to be taxpaying citizens. The groups are virtually identical. Citizens of this country already have their interests represented and viewpoints expressed by a multitude of governmental units. At Federal, State, and local levels of government, there are literally thousands of agencies or elected bodies which speak for the citizen. To attempt to treat consumers as some sort of separate, identifiable group is to create a rhetorical smokescreen that only hides and distorts the real issues.

We must recognize that there is no single consumer position on the issues that an Agency for Consumer Advocacy

realistically could support. Let me discuss a few issues which I think illustrate this point.

The White House, in its background report on the need for a consumer advocacy agency, suggested several instances which the need for such an agency was supposedly demonstrated. One dealt with decisions by the Civil Aeronautics Board on allowing certain air carriers to enter various markets. I would suggest that a great many policy issues enter into any determination of whether an application to serve a particular route should be approved. For example, would an additional carrier in a given market contribute to the financial instability of existing carriers which might, in the long run, hurt the quality of their air service? Would an additional carrier actually reduce costs of fares to consumers? Whatever the answers to these questions, I should think it would be abundantly clear that it is impossible to determine by any objective standard what the "consumer's" position in such controversies should be. Such a determination is necessarily a somewhat arbitrary judgment based on the ideological inclination, or a variety of other factors, of the individuals making the decision.

The fallacy of assuming that "consumers" have a single, definable interest is even better illustrated by another example set out by the White House. The White House background paper suggests that there should be "consumer" involvement in setting the price of oil. But what is the "consumer" interest? Does the consumer want low current prices on energy even if it means shortages or doing without in the future? Does the consumer want higher, or decontrolled, prices now, so that reliable domestic supplies can be enhanced for the future? The point is that the resolution of these questions will be based on the political judgments of a diverse people with diverse political inclinations. To suggest that any single agency could discern and then represent the interests of "consumers" in such contexts is ludicrous in the extreme.

However, that is precisely the assumption which S. 1262, the Consumer Protection Act of 1977, makes. In numerous places in the bill, the Administrator is empowered to go forth and represent "the interests of consumers" before virtually any Federal agency. In effect, the Administrator becomes the one man in the United States charged with the responsibility for deciding what is good for consumers. The bill specifically provides that the Administrator's decision as to what constitutes the "consumer's interest" is not even reviewable by a court. Only later, in the course of judicial review of the agency in whose affairs the Administrator intervened, would his decision be reviewable. The net result is that, unlike other agency proceedings, minority points of view would not be heard.

Of course, the bill does try to give us some protection. It provides that this all-knowing Administrator must be "exceptionally well qualified." In light of the difficulties, indeed the impossibility, of determining objectively what is in the consumer interest, it is virtually beyond comprehension to figure out what it means when the bill says the Administrator must be exceptionally well qualified. Does that mean someone who has loudly claimed to be in favor of consumers? Does that mean someone who has consumed so conspicuously throughout his or her life that they are qualified by total volume consumed? Does that mean someone who takes a particular point of view on the various issues? Obviously, the phrase is meaningless, as are most of the supposed standards spelled out in the so-called "Consumer Protection Act of 1977."

Another fallacy of this legislation is the idea that the creation of a new agency will solve the problems we supposedly have with the old agencies. Virtually all of our present agencies were set up to advance the public interest, within the constraints of the statutes setting up the agencies. In the case of the examples I have previously mentioned, we presently spend over $218 million annually for salaries and expenses in the Federal Energy Administration, which evaluates energy allocation and pricing regulations. We spend $22.6 million per year for salaries and expenses to run the Civil Aeronautics Board. The new Energy Department, I understand, will cost $10 billion to operate. Presumably, those agencies, and that tax money, go to advance the public interest in those subject areas. Now if those agencies are not advancing the public interest, and are not fulfilling their statutory mandates, it is beyond me how the proponents of this bill can suggest that the creation of yet another agency, and the expenditure of more tax dollars, can solve the problem.

I do not mean to suggest that I approve of all the present activities of our regulatory agencies. In some cases, quite the contrary is true. What I do mean to suggest is that the injection of another Federal agency into the regulatory processes will not solve the problems—whatever they are.

The plain fact is that this bill and the agency it sets up are totally unnecessary. Another layer of bureaucracy will be created, responsible to nothing other than its own subjective opinion of what makes good public policy. The taxpayers of this country will be shelling out tax dollars for more Federal bureaucrats. Taxpayers will have to sit back and watch the sorry spectacle of their tax dollars being spent by one Federal agency that is suing another Federal agency. In effect, we will have court cases named "United States versus United States," with the big loser in the case being the U.S. taxpayer. Paper will be shuffled and hearings will be held and viewpoints will be selectively aired, with the net result being nothing more than the slowing down of the processes of Government and business.

Mr. President, when I consider the utter uselessness of this agency—the fallacies upon which it is based, the fallicies in its purported solution to agency problems, the cost of it to the taxpayers—I can only conclude that the most appropriate name for this agency is the "Agency for Consumer Agony"—because that is just that it will produce for the taxpaying citizen.

Mr. President, I hope that at some point we in Congress shake off the intellectual blinders that have caused us to seek a solution to every problem under the Sun with a new Federal agency. Such solutions are no solution at all. Let us throw the "Agency for Consumer Agony" on the bureaucratic scrap heap, where it belongs.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Oklahoma yield back any time remaining?

Mr. BARTLETT. Mr. President, I yield the remainder of my time to the majority leader.

Mr. ROBERT C. BYRD. How much time is that?

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma has 5 minutes remaining.

Mr. ROBERT C. BYRD. If the Senator has no objection and the minority leader does not need the time, I ask unanimous consent to control that 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Under the previous order, the Senator from Iowa (Mr. CLARK) is recognized.

FUNDING FOR THE FEDERAL GRAIN INSPECTION SERVICE

Mr. CLARK. Mr. President, I wish to express my concern about a section of the agriculture appropriations bill recently reported by the House Appropriations Committee.

The bill, H.R. 7558, is a $12.7 billion measure with appropriations for fiscal year 1978 for a wide range of authorities relating to agriculture, principally those administered by the USDA.

The section to which I am referring relates to funding for the Federal Grain Inspection Service, a new agency established last year under the authority of Public Law 94-582, the U.S. Grain Standards Act Amendments of 1976.

Public Law 94-582 represents a major reform effort intended to clean up the corruption that has plagued the Nation's grain inspection system in recent years.

My concern stems from two actions the House committee has taken in this appropriations measure:

First, the committee voted not to allow the Federal Grain Inspection Service an additional $2.6 million it has requested to carry out provisions of Public Law 94-582 intended to greatly strengthen grain inspection and weighing services.

Second, the committee adopted language which—if passed into law—would have the effect of almost completely prohibiting the FGIS from carrying out the supervision of State and private inspection activities at interior points—a function specifically required by Public Law 94-582.

I would like at the conclusion of my

remarks to insert in the RECORD two stories by Mr. James Risser, the bureau chief of the Des Moines Register, describing the House committee actions and their likely impacts.

The ACTING PRESIDING pro tempore. Without objection, it is so ordered. [See exhibit 1].

Mr. CLARK. Mr. President, I am greatly disturbed by what the House Appropriations Committee has done. The committee has moved to undo much of what we accomplished last year in Public Law 94-582, and has done so solely on the basis of the unsubstantiated assertion that—and here I am quoting from the committee's report—

The problem that needed correction was at the export points.

This assertion is highly debatable, at best. Indeed, it was debated at great length last year during our consideration of the Grain Standards Act amendments, and since both Houses finally agreed to reform interior inspection as well as port inspection, one would have thought that the matter had already been resolved.

At the very least, there is simply no excuse for the cavalier treatment the House committee has given the subject here. The committee's action is irresponsible, and an insult to the Members of both Houses who worked long and hard to bring the Grain Standards Act amendments into law last year.

Mr. President, the background of that legislation is well known. It was a response to widespread problems in the grain trade—problems involving significant and widespread criminal activity related to the misgrading and misweighing of grain. The new law, and the new FGIS it authorized, were designed to provide us with more consistent and more reliable systems to restore the confidence of domestic and foreign buyers in the integrity of our grades and weights.

The House committee's actions would have very serious implications for the implementation of the new law. This is particularly true with regard to the language which was adopted to prohibit the FGIS from supervising State and private inspection in the interior. This language reads as follows. It states that the FGIS cannot use any funds appropriated in H.R. 7558.

To pay the salaries of any person or persons who authorize more than 100 man years for inspection and weighing services at interior points in the United States under public law 94-582.

Let me describe in some detail some of the effects this rather opaque language would have:

First. Since about 40 employees must be utilized for the appeals function of the Service, and 30 are currently employed in clerical functions, only 30 employees would be available for interior activities for all other functions mandated in the revised act. It would be impossible to supervise the 86 State and private agencies performing original inspection at interior locations with only 30 man-years staff time. The supervised agencies currently employ almost 3,000 licensees as either inspectors, weighers, samplers, or technicians.

Under the old act there were 238 Federal supervisors, inspectors, and clerical employees at interior offices to supervise State and private agencies. The new limitation would mean 138 of these individuals would have to be transferred to export locations and this would completely eliminate the possibility of establishing new programs required under the revised act, such as a weighing program, and so forth.

Second. There are approximately 19 open investigations at some stage of development at interior locations and it is anticipated that indictments involving fraud, coercion, theft, and misweighing will be forthcoming as the investigations are finalized.

The 19 investigations of possible violations include:

Improper certification of inspection; conflict of interest; deceptive loading; allegations involving attempts to influence inspection personnel; acceptance of gratuities; improper performance of duties; attempted bribery; attempt to falsify inventory positions; unauthorized personnel performing official functions; possible obstruction of justice; and theft.

Recent indictments at interior locations include: two individuals for violation of U.S. Warehouse Act; six charged with conspiracy, mail fraud, violation of U.S. Warehouse Act and making false statements; and 10 were charged with bribery and conspiracy. Until recently, there had been insufficient manpower to perform the needed investigations at interior locations. As a result, the department moved first to clean up the export situations and then to address inland problems.

Third. Malfeasance which was widespread at export locations would be encouraged at interior locations if little or no supervision was available; 18 indictments have been handed down at interior locations in Indiana and South Carolina. This is a strong indication that illegal activities have existed at interior locations.

Fourth. Original inspection is required on an interim basis to be performed by Federal officials when malfeasance or unavailability of private or State employees occurs. It would be impossible to perform these services with the limitation imposed.

Fifth. Intermarket grading differences would increase significantly because it would be impossible to correct deviations in grading by the different agencies in different States.

Sixth. The act mandates the supervision of weighing at interior locations at the option of interior applicants. This is a new program with no previous staffing. It will be impossible to provide supervision of weighing with the 100-man limitation imposed by the House Appropriations Committee.

Seventh. If the limitation is enacted, the department would be expected to recommend revision of section 5(b) of the act.

Section 5(b) reads as follows:

All official inspection and official weighing, whether performed by authorized service employees or any other person licensed under section 8 of this act, shall be supervised by representatives of the administrator, in accordance with such regulations as he may provide.

It is unlikely that this provision could be enforced if the House Appropriations Committee limit were effected.

Eighth. In addition, reduced supervisory staff would be expected to result in:

Increased misgrading of grain;

Delay of checktesting equipment and therefore, faulty equipment used for long periods of time;

Backlog in approving diverter-type site installations and maintaining a uniform checktest system;

Major delays in examining and licensing official inspection agency employees in a timely manner.

Lack of Federal employees to monitor Federal Grain Inspection Service and official inspection agency compliance of program objectives.

Lack of manpower to collect samples and data for standardization and market news; for example, moisture, toxic weed seed, crop quality, et cetera.

Lack of manpower to train and supervise FGIS employees.

Inadequate time to seek out and report, and correct major and minor incidents of wrong doings.

Almost total reliance on official inspection agencies for training and supervision of their own employees resulting in inequities in ability to perform.

These are extremely serious restrictions. They are all the more serious because they remove the single reform instituted at many interior locations by the 1976 act. A strong attempt was made to institute a Federal Inspection Service at the major inland terminals. This body passed a strong bill with such a provision. The House measure was a much weaker bill, and the House conferees prevailed on that point. The Senate conferees agreed with the House, in no small part because of the assurance that there would be full and adequate supervision of the State and private agencies which would be allowed to continue to operate at the interior points.

The House Appropriations Committee proposal would cripple that supervision. USDA claims that the limitation proposed by the Appropriations Committee would reduce the level of supervision at interior points to levels substantially below those that obtained prior to passage of the 1976 act.

Mr. President, I urge the Senate Appropriations Committee to report a bill with strong support for the Federal Grain Inspection Service.

I hope the House will reject the ill-considered FGIS restriction when the bill comes to the House floor. If the House does not, it will be even more imperative that the Senate take the strongest possible stand against such a limitation.

We must strive to maintain a strong Federal Grain Inspection Service. To return to the earlier pattern of widespread corruption and misrepresentation of weights and grades levies far too great a cost on our farmers and the entire grain trade.

EXHIBIT 1

[From the Des Moines Register, June 5, 1977]

GRAIN REFORM SETBACK FEARED

(By James Risser)

WASHINGTON, D.C.—The House Appropriations Committee has approved a bill that would effectively block many of the reforms in grain inspection procedures ordered by Congress last year.

The bill is considered likely to be approved by the full House.

The reforms were designed to tighten government control over the grading and weighing of grain, in response to a scandal in which more than 70 individuals and companies in the grain business were convicted of crimes.

However, as the result of spending limitations that the Appropriations Committee has voted to impose on the Agriculture Department's new Federal Grain Inspection Service (FGIS), federal supervision of grain and weighing at all inland grain elevators would have to be cut off.

Agriculture Department officials, in documents obtained by The Register, said they view the House panel's action with "extreme alarm," warning that it would "reinstate the acute shortage of supervision which made possible the malfeasance in grain inspection.

Additional budget cuts ordered by the committee for the FGIS headquarters here would, according to department officials, delay adoption of inspection and weighing rules, hamper enforcement of the tougher inspection laws, and "adversely affect national uniformity in inspection procedures."

The spending cuts approved by the committee were the work of Representative Jamie Whitten (Dem., Miss.), the chairman of the appropriations subcommittee on agriculture. Whitten's nearly single-handed control over Agriculture Department budgets year after year has won him the unofficial title here of "permanent secretary of agriculture." He is generally regarded as a foe of government regulatory programs.

In a report accompanying the bill, Whitten said supervision of inland grain elevators is not needed because problems of corruption in grain inspection, grading and weighing "have solely been at the export points." Setting up "a large internal inspection operation" to oversee the activities of privately employed inspectors at inland grain elevators "places a needless burden on both the producer and the consumer," said Whitten.

That contention was rejected by the U.S. General Accounting Office (GAO) in 1975 in 1975 in its nationwide study of grain inspection procedures. The GAO concluded that inadequate government supervision of the inspection system, as well as built-in financial conflicts of interests between inspection agencies and the grain firms they inspect, created the same climate for corruption at inland points as had been shown at export points. The study said that a national system of grain inspection was needed.

The Agriculture Department documents, prepared in response to the House Appropriations Committee's cutbacks say:

"The recent indictments of 18 individuals at interior locations indicate major problems still exist, and strong federal supervision is needed to minimize these illegal activities."

The indictments involved grain elevator managers, government-licensed samplers, truck drivers and weighing personnel at elevators in South Carolina and Indiana. They are charged with conspiracy to defraud and other crimes in connection with misweighing of grain and billing customers for "phantom" truckloads of grain.

FGIS HIRING LIMIT

Unless the funds chopped by Whitten are restored by the full House, or later by the Senate, "the department would have no alternative but to recommend revision of Section 5(b) of the (1976 Grain Standards) Act, to release the department from the obligation to provide supervision of inspection and weighing at interior points," the department officials said.

Whitten's method for cutting back on inland grain inspection supervision was to insert, in the bill providing money for all Agriculture Department programs, a provision ordering FGIS not to employ more than 100 people to carry out inland duties.

Despite Whitten's statement that this would simply keep the inland inspection staff at the same size it was before the 1976 reforms were adopted, department officials said it actually would cut the staff by more than half.

"The FGIS had 238 federal employees at interior locations prior to the revision of the Act and would have to transfer 138 employees to export locations in order to comply with the 100-limitation recommended by the House Appropriations Committee," the department said. This would, in effect, reduce our interior staffing to less than 50 per cent of staffing prior to the revision of the Act.

"There would be no national uniformity in inspection, in a system so inadequately supervised, nor would it be possible to develop a uniform weighing program as mandated in the Act."

If interior supervision had to be handled by only 100 FGIS employes, only 30 actually would be available to supervise inspection and weighing by some 3,000 state and private inspectors, because the other 70 are necessarily tied up in conducting appeal inspections and in clerical work, the officials said.

In addition to his action in interior supervision, Whitten trimmed $2.6 million and 100 employes from FGIS's proposed Washington headquarters staff of 471 people. "No sound basis for this large a staff was presented to the committee," said Whitten.

In its analysis, the department said that cut would "severely limit" implementation of the inspection reform law. Most affected would be efforts to develop new inspection and weighing procedures, revise grain grading standards, hire and train field personnel, conduct appeal inspections, and carry out compliance activities and investigations of suspected irregularities, officials said.

As approved by the Appropriations Committee, FGIS will get a $10.9 million appropriation for the fiscal year beginning next Oct. 1. The agency had requested $13.6 million.

INCOME FROM FEES

The grain inspection system actually will cost about $60 million a year, but most of the cost is financed through user fees paid by grain firms and others who use the inspection service.

The Appropriations Committee approved its bill on May 24 without a record vote on either the FGIS budget or the entire bill. The bill is scheduled for debate in the House on June 16. Because of the power of the committee and its subcommittee chairmen, such as Whitten, appropriations bills rarely are altered on the House floor.

[From the Des Moines Register, June 7, 1977]

(By James Risser)

WASHINGTON, D.C.—A bill which drastically slashes funding for federal grain inspection was approved by the House Appropriations Committee without any discussion and with many committee members absent, Representative Neal Smith (Dem., Iowa) said Monday.

Smith is a member of the committee and attended the session, but said he was unaware that the bill chops $2.6 million from the budget requested by the Federal Grain Inspection Service (FGIS) and forbids the new agency from assigning more than 100 employees to supervise grain inspection and weighing at inland grain elevators.

"There was no discussion at all," Smith said Monday. "It came up while there was a quorum call on the House floor, and some people were gone and it just went through without any discussion."

Grain inspection is just one section of the $12.7 billion bill which appropriates money for all U.S. Department of Agriculture programs for the coming year. It is scheduled for debate on the House floor next week.

Smith wanted to take a hard look at the legislation to determine whether it adequately funds the new strengthened grain inspection system adopted by Congress last year.

"I want them to have whatever they need to carry out the program," said Smith. "If they need more than 100 employes to supervise inland grain inspection and weighing, I'd be against this provision in the bill."

On the other hand, said Smith, the Agriculture Department initially gave Congress "inflated" and "ridiculous estimates" of what the beefed-up inspection system will cost.

Except for the costs of regulating grain weighing—a new duty imposed by the tougher law—the Agriculture Department should be able to perform inspection duties at costs no greater than those incurred by private inspection agencies which operated in the past, said Smith.

"The private companies made money at the fees they charged," said Smith, adding that the Agriculture Department is charging higher fees.

FGIS officials say the fees are designed to offset most of the in-the-field cost of the new system, which they describe as being more comprehensive in response to congressional findings that the old system was weak and permitted corruption. They also insist that at ports, where all inspection now is done by federal officials, total costs for grain shippers may even be lower than in the past. The exporters often used to pay for two inspections, they said—an original inspection by the private agency and an "appeal" inspection by the Agricultural Department.

The grain inspection funding bill, approved May 24 by the Appropriations Committee, was drafted by Representative Jamie Whitten (Dem., Miss.), chairman of the appropriations subcommittee on agriculture.

He said increased supervision at interior grain markets is unnecessary, because the corruption shown during the grain inspection scandal of the past two years was at port elevators. Thus, he said the FGIS should be limited to using 100 people for inland purposes.

Whitten also took 100 employees and $2.6 million away from the FGIS Washington headquarters budget, saying agency officials had failed to prove that they need that much money.

Agriculture Department officials say Whitten's actions, if they become law, would seriously cripple efforts to eliminate weaknesses that led to corruption.

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 5 minutes remaining.

CLEAN AIR AMENDMENTS OF 1977

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the disposition of the amendment by Mr. SCOTT today to the Clean Air Act, Mr. BARTLETT be recognized to call up two amendments; that there be a time limitation on each of these two amendments of 40 minutes to be equally divided between Mr. BARTLETT and Mr. MUSKIE.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, did Mr. CLARK yield back any time?

The ACTING PRESIDENT pro tempore. The Senator from Iowa did not yield back his time.

Mr. ROBERT C. BYRD. Did he consume his time, all of it?

The ACTING PRESIDENT pro tempore. The Senator from Iowa had 5 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may have those 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CAPITOL POLICE SAVE LIFE OF VISITOR TO THE SENATE

Mr. ROBERT C. BYRD. Mr. President, on Monday, June 6, Mr. Saul Greenberg, a visitor to the Senator's family gallery, suffered a heart attack while he was our guest. The quick action and highly trained skills of Capitol Police Officer Gilbert T. Mayo and Detective Sgt. Lester R. Bell were responsible for saving the life of Mr. Greenberg, according to medical staff of the Capitol Physician's Office and of George Washington University Hospital.

Officer Mayo and Detective Sergeant Bell quickly responded to the emergency situation, moving Mr. Greenberg to the hallway where Officer Mayo began cardiopulmonary resuscitation to aid the victim. Upon arrival of representatives of the Capitol Physician's Office, these fine officers continued to assist in the lifesaving efforts of the medical team. They later accompanied Mr. Greenberg to the hospital, working in every way possible to keep him alive and comfortable.

I also believe this is a good time to note the value of the Capitol Physician's Office and of the congressional policy which provides emergency medical care for Members of Congress, staff, or visitors to Capitol buildings. Dr. Freeman H. Carey, the Capitol Physician, and members of his staff provide first aid instruction and instruction in cardiopulmonary resuscitation to doorkeepers and to members of the Capitol Police Force. The coordination of our medical officers with the Capitol Police Service has certainly proved its value in this case, and is deserving of our appreciation and praise.

Dr. Carey and his staff are prepared to handle any medical emergency or to provide first aid assistance to Members of Congress, staffs, representatives of the press, and the 4 million tourists who annually visit the Capitol Building and Senate and House Office Buildings. It is commendable that Dr. Carey is also responsible for the various medical screening programs which are coordinated with staff clubs and with Members of Congress, and that he and his staff serve as medical consultants to the U.S. Capitol Police Board, examining recruits and providing officers with the kind of special first-aid training which saved Mr. Greenberg's life on Monday.

We are all indebted to these officers for their efficiency and expertise, and for their devotion to duty. They have saved the life of a citizen, and they have brought credit to themselves, to their service, and to the U.S. Senate.

Too often we take for granted the professional abilities and high quality of service performed by the Capitol Police. For all of those who use or visit the Capitol Building, these men and women offer courtesy, protection, and safety. This emergency, which was prevented from becoming a tragedy by the first-aid skills of Officer Mayo and by the quick action of both officers, can serve to remind us of how well we are served by the men and women of our own "finest"—the Capitol Police.

I want to offer my own thank you and commendation to the official commendations being prepared. I take special pride in the fine work they have performed in this case, and in the quality of police work which their actions represent.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield to the distinguished minority leader.

Mr. BAKER. Mr. President, I thank the distinguished majority leader for giving me just a moment to join him in expressing my commendation and congratulations to the excellent representation of our fine police officers and to our Capitol physician's office.

I remember another incident when I was a member of the Joint Committee on Atomic Energy when Dr. Miles Segal was seized with a stroke, fell into a sea of microphones during a public hearing, which was widely covered on television and radio, and it seemed like only a matter of seconds before the Capitol physician's office was at that location and made a valiant, although in that case a vain, effort to revive that distinguished scientist.

But the point of the matter is, Mr. President, that the majority leader is entirely correct in saying we have excellent and dedicated police officials here and a very highly qualified and competent medical staff. I think it is essential in view of the number of people who are located in and are associated with the Capitol.

I would like to especially point out that Dr. Peter Nielsen of the Capitol physician's office, was the first and primary physician to attend this victim. He is a young man who, I am sure, will have a great future in medicine, and I commend him for his promptness, his attention and diligence in contributing to the efforts already administered by the Capitol police.

I am delighted that the majority leader has seen fit to signal our respect and admiration for these fine public servants and professionals.

I thank the Senator for yielding.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

Mr. BARTLETT. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. I yield to the Senator from Oklahoma.

Mr. BARTLETT. I point out that this is not a completely unusual situation. It was just 2 years ago that Officer Monty Curtis, finding a woman collapsed and one who had a heart attack, gave mouth-to-mouth resuscitation, revived her, and she lived. He was given full credit for this.

I am glad I have an opportunity to put this in the RECORD because I do not think any official record was ever made of that.

I happen to know his father, who was a classmate of mine in high school in Marietta, Ohio, many years ago. So I followed it very closely.

I commend the distinguished majority leader for bringing this to our attention.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Oklahoma.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business on the remaining time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:17 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its clerks, announced that:

The House has agreed to, without amendment, the concurrent resolution (S. Con. Res. 28) authorizing technical corrections in the enrollment of H.R. 5840.

The House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5840) to amend the Export Administration Act of 1969 in order to extend the authorities of that act and improve the administration of export controls under that act, and to strengthen the antiboycott provisions of that act.

The House disagrees to the amendment of the Senate to the bill (H.R. 4301) to authorize appropriations for the Na-

tional Sea Grant Program Act during fiscal year 1978, and for other purposes.

The House has passed the following bills in which it requests the concurrence of the Senate:

H.R. 10. An act to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations or influences, and for other purposes; and

H.R. 7636. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1978, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Rules and Administration:

With amendments:

S. Res. 144. A resolution authorizing additional expenditures by the Committee on Agriculture, Nutrition, and Forestry for inquiries and investigations (Rept. No. 95-242).

With an amendment:

S. Res. 142. A resolution authorizing additional expenditures by the Committee on Armed Services for inquiries and investigations (Rept. No. 95-243.)

S. Res. 164. A resolution authorizing additional expenditures by the Committee on Banking, Housing and Urban Affairs for inquiries and investigations (Rept. No. 95-244).

S. Res. 159. A resolution authorizing additional expenditures by the Committee on the Budget for inquiries and investigations (Rept. No. 95-245).

S. Res. 151. A resolution authorizing additional expenditures by the Committee on Commerce, Science, and Transportation for inquiries and investigations (Rept. No. 95-246).

S. Res. 158. A resolution authorizing additional expenditures by the Committee on Energy and Natural Resources for inquiries and investigations (Rept. No. 95-247).

S. Res. 157. A resolution authorizing additional expenditures by the Committee on Environment and Public Works for inquiries and investigations (Rept. No. 95-248).

With amendments:

S. Res. 97. A resolution authorizing additional expenditures by the Committee on Finance for inquiries and investigations (Rept. No. 95-249).

Without amendment:

S. Res. 156. A resolution authorizing additional expenditures by the Committee on Foreign Relations for a study of matters pertaining to the foreign policy of the United States (Rept. No. 95-250).

With an amendment:

S. Res. 161. A resolution (S. Res. 161) authorizing additional expenditures by the Committee on Governmental Affairs for inquiries and investigations (Rept. No. 95-251).

S. Res. 146. A resolution authorizing additional expenditures by the Committee on Human Resources for inquiries and investigations (Rept. No. 95-252).

S. Res. 170. A resolution authorizing additional expenditures by the Committee on the Judiciary for inquiries and investigations (Rept. No. 95-253).

Without amendment:

S. Res. 189. An original resolution authorizing additional expenditures by the Committee on Rules and Administration for inquiries and investigations (Rept. No. 95-254).

With amendments:

S. Res. 149. A resolution authorizing additional expenditures by the Committee on Veterans' Affairs for inquiries and investigations (Rept. No. 95-255).

Without amendment:

S. Res. 140. A resolution authorizing additional expenditures by the Select Committee on Small Business for inquiries and investigations (Rept. No. 95-256).

With an amendment:

S. Res. 148. A resolution authorizing additional expenditures by the Select Committee on Intelligence (Rept. No. 95-257).

S. Res. 147. A resolution authorizing expenditures by the Special Committee on Aging (Rept. No. 95-258).

With amendments:

S. Res. 141. A resolution authorizing expenditures by the Select Committee on Nutrition and Human Needs (Rept. No. 95-259).

By Mr. EASTLAND, from the Committee on the Judiciary:

Without amendment:

S. 760. A bill for the relief of Duane G. Wegner (Rept. No. 95-260).

With an amendment:

S. 422. A bill for the relief of the First Baptist Church of Paducah, Ky. (Rept. No. 95-261).

Without amendment:

H.R. 3314. A bill for the relief of Tri-State Motor Transit Co. (Rept. No. 95-262).

By Mr. SPARKMAN, from the Committee on Foreign Relations:

With amendments:

S. 469. A bill to establish a commission to study proposals for establishing the National Academy of Peace and Conflict Resolution (title amended) (Rept. No. 95-263).

By Mr. MUSKIE, from the Committee on the Budget:

Without amendment:

S. Res. 178. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1231, a bill to raise the limitation on appropriations for the United States Commission on Civil Rights (Rept. No. 95-264).

S. Res. 180. A resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1061 (Rept. No. 95-265).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary:

Jamie C. Boyd, of Texas, to be U.S. attorney for the western district of Texas.

Rodolfo A. Garza, of Texas, to be U.S. marshal for the western district of Texas.

Joseph J. Harvey, of Washington, to be U.S. marshal for the western district of Washington.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Finis E. Cowan, of Texas, to be U.S. district judge for the southern district of Texas.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred as indicated:

H.R. 10. An act to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations or influences, and for other purposes; to the Committee on Governmental Affairs.

H.R. 7636. An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1978, and for other purposes; to the Committee on Appropriations.

ORDER FOR STAR PRINT—REPORT 95-161

Mr. HUMPHREY. Mr. President, the Senate will soon consider S. 1520, the International Development Assistance Act of 1977. I want to call attention to two printing errors in the committee report on this bill, Report No. 95-161.

The first is on page 2 of the report. Footnote 2 on page 2 of the report should read:

Both the Executive request and the bill contain a "no year" authorization of $200,000,000 for implementation of the Sahel development program. However, the bill, in accordance with Executive appropriation request, limits the amount which may be appropriated for the program in fiscal year 1978 to $50,000,000.

On page 39, the first sentence in section 5—International Organizations and Programs should read:

This section extends the authorization for International Organizations and Programs through fiscal year 1978 and authorizes appropriations of $262 million for fiscal year 1978 of which not more than $42.5 million shall be available for voluntary contributions to the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).

Mr. President, I ask unanimous consent that a star print be made.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR STAR PRINT—REPORT 95-195

Mr. HUMPHREY. Mr. President, it has been brought to my attention that Senate Report 95-195 on the International Security Assistance and Arms Export Control Act of 1977 (S. 1160) contains a few typographical and printing errors that should be corrected.

The corrections are as follows:

Page 1:

The program authority number in the fourth line of the second paragraph should read "$4,679,100,000."

The reduction in budget authority mentioned in the fifth line of the second paragraph should read "$36,300,000."

Page 8:

The total for 1978 security assistance to Cyprus in the chart is "$15,000,000."

Page 18:

The ninth country entry in the chart is "Iran."

Page 25:

The first sentence should read "Paragraph (c) of Section 532 as amended would authorize use of $1 million for the preparation of a systematic and comprehensive study of the development requirements of southern Africa."

Mr. President, I ask unanimous consent that a star print be made.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. METCALF:

S. 1671. A bill to designate the Absaroka-Beartooth Wilderness, Custer and Gallatin National Forests, in the State of Montana; to the Committee on Energy and Natural Resources.

By Mr. HUMPHREY:

S. 1672. A bill for the relief of Dr. Daniel Aguila; to the Committee on the Judiciary.

By Mr. WILLIAMS:

S. 1673. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 in order to provide additional control over and eventually terminate the dumping of sludge into the oceans off the United States; to the Committee on Environment and Public Works.

By Mr. LAXALT (for himself and Mr. CANNON):

S. 1674. A bill to amend the Internal Revenue Code of 1954 with respect to employer's duties in connection with the recording and reporting of tips; to the Committee on Finance.

By Mr. HATHAWAY:

S. 1675. A bill to assure that an individual or family, whose income is increased by reason of a general increase in monthly social security benefits, will not, because of such general increase, suffer a loss of or reduction in the benefits the individual or family has been receiving under certain Federal or federally assisted programs; to the Commitee on Finance.

By Mr. INOUYE:

S. 1676. A bill to amend an emergency flood control authorization in order to authorize emergency protection work in the event of anticipated volcanic eruption; to the Committee on Environment and Public Works.

By Mr. SCHWEIKER:

S. 1677. A bill for the relief of Manuel Sicuan Uson and his wife, Nancy Santa Rosa Uson; to the Committee on the Judiciary.

By Mr. LEAHY (by request):

S. 1678. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. METCALF:

S. 1671. A bill to designate the Absaroka-Beartooth Wilderness, Custer and Gallatin National Forests, in the State of Montana; to the Committee on Energy and Natural Resources.

Mr. METCALF. Mr. President, I am proud to introduce for appropriate reference the Absaroka-Beartooth Wilderness Act of 1977.

The Forest Service has for years maintained as primitive areas in Montana two parcels of land identified as the Absaroka and the Beartooth lying north and east of Yellowstone National Park. They totaled 64,000 and 230,000 acres respectively.

After holding public hearings in 1974, the Agency formally proposed that the areas be unified and expanded into an Absaroka-Beartooth Wilderness Area of 542,000 acres.

My proposal further expands the acreage to approximately 913,500. It includes one major area—the large North Absaroka Range—upon which the Forest Service postponed a judgment and several smaller adjoining fringe areas which the agency had rejected.

Despite the view held by many that the logical boundaries of an expanded Absaroka-Beartooth Wilderness Area must include the contiguous high lake country across the Wyoming border, I have refrained from including it at the request of the senior Senator from Wyoming, Senator CLIFFORD HANSEN.

Mr. President, while no area of this size could be completely free of controversy, the concept of an expanded Absaroka-Beartooth wilderness proposal has received a remarkably wide degree of acceptance. It has been endorsed in Montana by Gov. Thomas Judge, numerous conservation groups, the Montana Fish and Game Department, the Montana League of Women Voters, and others. Many national groups also favor its creation, as does President Carter, who singled out the Absaroka-Beartooth for support in his recent Environmental Message of May 23.

Located in the Gallatin and Custer National Forests of southern Montana, this magnificent primeval expanse of nearly a million acres consists of a major part of the remaining wild country in the Absaroka Range and the Beartooth Plateau. The proposed wilderness is a land of jewel-like lakes, clear cold streams and picturesque waterfalls. It is an area of glaciated timbered valleys and rugged summits. Granite Peak, at 12,799 feet in elevation on the Beartooth Plateau, is the higheset point in Montana. The entire roadless tract is a major quality watershed for the Yellowstone River, one of America's finest blue-ribbon trout streams. With steep slopes and unstable soils, much of the area is easily disturbed by the works of man and is slow to heal.

Geologically, the Beartooths are both young and old. The basement rocks, pre-Cambrian gneisses and schists, are among the oldest in the world. Indeed one recent analysis asserts that they are the oldest in the world, other still than those found in Greenland, previously believed to hold the record. The mountains of the Absaroka, however, are young, having been uplifted during a recent geologic era through the overlying volcanic and sedimentary strata which typify the range. The difference between the durable metamorphic rocks of the Beartooths and the softer rocks of the Absarokas has resulted in two strikingly distinct topographies and a corresponding diversity in ecosystems.

In the Beartooths, there is vast space and flowing water. Numerous waterfalls and nearly 300 lakes dot the high and often treeless plateaus. The Absarokas are much gentler in aspect than the Beartooths. Deep forested valleys with rich moist soils support ferns, mosses, sedges, and a myriad of wildflowers.

This magnificent high country has caught the imagination of countless thousands of people who have seen it. The Crow Indians have always revered it as sacred giving it its current name "Absaroka" which is their word for their own tribe. Rugged mountain men followed in the wake of the Indians, and succeeding generations have crisscrossed it, taking beaver, occasional metals, and other items. However, the region remains primeval in almost all its aspects, and qualified as an outstanding example of remaining wilderness in this country.

The area provides irreplaceable habitat for many species of wildlife that require an essentially wilderness environment to prosper. Among them are the endangered northern Rocky Mountain wolf, the threatened grizzly bear, and elk, moose, bighorn sheep, mountain goat, mountain lion, pine marten, wolverine, bald and golden eagles, and cutthroat trout. These high mountain zones represent the last refuge of these and other important wildlife species.

The Absaroka-Beartooth region offers the ultimate in recreational possibilities. In fact, it is already used by thousands of people as a de facto wilderness and the numbers are sure to grow. It supports a large guiding and outfitting industry, which adds to the economy of the region. It is particularly attractive to visitors because of its accessibility. The area can be reached easily from Billings and Red Lodge in the east, Columbus and Big Timber in the north, Livingston in the west, Gardiner and Cooke City in the south, and from several points in Yellowstone Park. The overwhelming majority of current visitors are Montanans, supporting the pattern revealed in other Montana wildernesses which show that 80 percent of users are Montanans. As total numbers grow, this percentage is expected to remain more or less constant.

The proposal introduced today represents both an earlier proposal and a citizens' response to the Forest Service recommendation advanced during the last administration. The agency completed its studies of the two primitive areas and certain contiguous national forest lands and held public hearings in March 1974, in Billings and Livingston, Mont., and in Cody, Wyo. At that time, it proposed separate Absaroka, Beartooth, and Cutoff Mountain Wildernesses totaling 517,000 acres. Meanwhile, an alternative proposal was being recommended by the Montana Wilderness Association and a collection of other groups interested in preservation of the State's natural areas. Its proposal called for a unified wilderness of more than 900,000 acres in Montana and Wyoming. At the hearings, strong support developed for a single wilderness area. The Montana Fish and Game Department endorsed the unified proposal and Gov. Thomas Judge urged that "all qualified lands be classified to provide the maximum wilderness area possible." He has recently reconfirmed in a letter to me his unqualified support for a maximum-acreage unified Absaroka-Beartooth Wilderness Area.

As a result of the strong public reaction, the Forest Service released a revised plan in July of 1974 calling for a 542,439-acre Beartooth Wilderness which combined the Agency's earlier separate recommendations. Although much improved, conservationists felt it omitted major adjoining lands of outstanding wilderness value. Chief among them were the Northern Absaroka Range in the northwest, the Cedar-Bassett drainages in the far west, the Goose Lake area in the south near Cooke City—the easternmost of Montana's three entrances to Yellowstone National Park—and the Wyoming high lake country. My proposal contains all of these suggested additions except the Wyoming portion, plus some selected smaller areas.

As can be expected, my proposal is not without controversy. Where possible, I have attempted to modify it to meet what I consider to be sincere and legitimate criticism. The major concession has to do with a possible road route from Cooke City northward to the Boulder Basin. During 1974, the same year in which hearings were held, there was discovered in the records of Park County a petition dating from the late 1800's for a county road right-of-way through this corridor, also called the Slough Creek corridor. The counties of Park and Sweet Grass, through which the corridor runs, maintain that the document gives them jurisdiction over a road right-of-way in the area. Such a right-of-way would permit the splitting of the huge area in two nearly equal parts. The Office of General Counsel of the Forest Service has investigated the records and conducted on-the-ground reconnaissance and has concluded:

Based upon all the facts and law presented, no county road was ever established and constructed. The Grant of 43 U.S.C. 932 was not accepted and therefore the area in dispute has always been and still remains under the jurisdiction of the United States.

Park and Sweet Grass Counties dispute this and have entered a challenge in the Federal courts. Although my bill contains the Slough Creek corridor, I have included a proviso in this proposed legislation which would, in effect, abide by the court's decision. The language, as quoted from section 4 of the bill, states:

Nothing in this Act shall be construed as affecting in any manner or to any extent any claim by Park County, Montana, and Sweet Grass County, Montana, to a right-of-way from Cooke City, Montana, to Boulder, or to affect in any manner or to any extent the relative rights and liabilities between the parties in connection with Cause No. 76-125-BLG, Park County, Montana, and Sweet Grass County, Montana, versus U.S.A., et al. filed in the United States District Court for the District of Montana, Billings Division, on October 4, 1976. Nothing in this Act shall be construed as abating such cause or as amending or otherwise affecting or modifying the provision of law pursuant to which such cause was filed.

I do not, of course, know how the court will rule in this matter. It is my preliminary opinion, based upon the facts which I have been able to review, that the weight of law favors the Forest Service. It is also my considered judgment that the Congress could be persuaded to declare the corridor as wilderness, thereby nullifying a possible judicial victory for the counties. However, I do feel that in the interests of fair play, the matter should be determined on its legal merits and, although risks are involved for wilderness advocates, I am willing to abide by a court decision.

Mention should be made of other areas which I have added to the Forest Service proposal. The largest one is the North Absaroka, a prime area of 253,000 acres which was bypassed by the Agency pending completion of a mineral survey. That survey has been completed, and it concludes that mineral potential is marginal at best. The Forest Service has rated this area highly, giving it a maximum 200 points on the Agency's scale of wilderness rating—the only one of 1,449 inventoried roadless areas nationwide receiving a perfect score.

The Cedar-Bassett Area, comprising the Cedar and Bassett Creek drainages, lies at the extreme western edge of my proposed area. The Forest Service has in the past planned timber sales in the area, but has since, of its own volition, halted all activity. The area's value as wildlife habitat and watershed outweighs, in my opinion, its value for timber.

My bill calls for inclusion of Goose Lake and a very narrow buffer zone on the southern edge of the overall area. Goose Lake, magnificent in itself, is the gateway to Grasshopper Glacier, a phenomenon in which ancient insects are frozen in ice, as well as to pristine high country beyond. There has been considerable vehicular damage around Goose Lake. It should be given the benefit of wilderness protection.

Northwest of my proposed Absaroka-Beartooth area is the so-called Stillwater Complex, a mineralized zone containing several metals which are in increasing demand. By and large, I have not intruded upon the complex. However, I have included the West Fork of the Stillwater River above the current Johns-Manville platinum mine adit. This portion of the West Fork drainage is of prime wilderness quality and its meadows serve the elk in their yearly migrations.

The boundaries of my proposal are carefully drawn and are, I believe, highly defensible. They include one of the largest remaining contiguous blocs of prime wilderness left in the Lower 48 States. Evidence of man's impact is minimal throughout. Especially important is the miniscule evidence of private inholdings in the proposed wilderness area. The most significant inholdings, totaling 570 acres, lie in the upper, or southern, end of the controversial Slough Creek corridor. Its owner, Cornelius Bliss, in the selfless spirit of a true preservationist, has generously offered to the U.S. Forest Service an option to purchase his property and has agreed not to alter the property during the term of the option. Supporters of a unified Absaroka-Beartooth are grateful to Mr. Bliss, and I, for one, will do what I can to secure funding for the Agency's purchase of the property after this bill is enacted into law.

In summary, Mr. President, this proposed wilderness lacks significant amounts of sawtimber, and no operable minerals are known to exist in the area. Also, no reasonable potential for water development can be found there. The entire unit is ideally suited for immediate inclusion in the wilderness system.

This wild expanse of high mountain country provides the only opportunity left in Montana to designate a superb wilderness of nearly a million acres. Northern Montana citizens are justly proud of the outstanding 950,000-acre Bob Marshall wilderness. Citizens of southern Montana are entitled to an equally magnificent Absaroka-Beartooth wilderness.

I urge prompt hearings and enactment of the legislation, and I ask unanimous consent that a copy of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1671

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 890), the area classified as the Beartooth and Absaroka Primitive Areas, with the proposed additions thereto and deletions therefrom as generally depicted on a map entitled "Absaroka-Beartooth Wilderness," date June 1977, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, is hereby designated as the Absaroka-Beartooth Wilderness, within and as part of the Custer and Gallatin National Forests, comprising an area of approximately nine hundred thirteen thousand five hundred acres.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and legal description of the Absaroka-Beartooth Wilderness with the Energy and Natural Resources Committee of the Senate and the Interior and Insular Affairs Committee of the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Absaroka-Beartooth Wilderness shall be administeered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. Nothing in this Act shall be construed as affecting in any manner or to any extent any claim by Park County, Montana, and Sweet Grass County, Montana, to a right-of-way from Cooke City, Montana, to Boulder, or to affect in any manner or to any extent the relative rights and liabilities between the parties in connection with Cause No. 76-125-BLG, Park County, Montana, and Sweet Grass County, Montana, versus U.S.A., et al. filed in the United States District Court for the District of Montana, Billings Division, on October 4, 1976. Nothing in this Act shall be construed as abating such cause or as amending or otherwise affecting or modifying the provision of law pursuant to which such cause was filed.

SEC. 5. The prevous classification of the Beartooth and Absaroka Primitive Areas is hereby abolished.

By Mr. WILLIAMS:

S. 1673. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 in order to provide additional control over and eventually terminate the dumping of sludge into the oceans off the United States; to the Committee on Environment and Public Works.

OCEAN DUMPING AMENDMENTS OF 1977

Mr. WILLIAMS. Mr. President, I am introducing today amendments to the Marine Protection, Research and Sanctuaries Act designed to improve ocean dumping regulation and establish a fixed timetable aimed at abandoning the ocean dumping of nondredged materials by 1981. I am disturbed that the original goal to phase out ocean dumping has not progressed at the pace envisioned by the MPRSA enacted in 1972. In fact, in the nearly 4 years that the Federal ocean dumping program has been in effect

ocean dumping levels for every major waste category have increased. This was not the original intent of Congress, and a reaffirmation of our desire to end ocean dumping is necessary.

Sludge is undeniably one of the Nation's major environmental problems. While our knowledge of sludge treatment and disposal is rapidly improving. Our ability to translate this experience into alternatives to ocean dumping has been slow to evolve. Several alternatives presently exist and other more environmentally acceptable methods are well beyond the demonstration stage. What we lack is a policy which defines beyond any doubt when we will abandon ocean dumping and which provides a specific timetable for meeting that goal.

Control and disposal of sludge is clearly a part of a much larger problem. It is critical that we implement better resource conservation and improved resource recovery systems. The intelligent use of our virgin materials and maximum recovery efforts to recycle these materials could radically reduce the amount of waste with which we must now contend. Breakthroughs in recovery techniques and new technology for disposing of what is left would go a long way to ending current hazardous disposal problems. Given the means to speed up sludge and other waste disposal technology, I am certain that we can end the use of existing offensive disposal procedures. However, the slow progress in efforts to end the ocean dumping of sludge dictates that the Congress establish a firm but achievable program to eliminate the unhealthy situation which now exists.

Of immediate concern to me is the potential disastrous effects sludge dumping can have off the shores of New Jersey. Ocean dumping is presently the most prevalent method for disposing of sludge. Although much controversy surrounds the impact of sludge dumping, one point is painfully clear: It can no longer be considered the most acceptable means of disposal. While I wholeheartedly believe that ocean dumping should be abandoned as soon as acceptable alternatives are on line, I feel even stronger that, without firm phaseout guidelines, EPA's declared objective to end ocean dumping by 1981 may be difficult to meet.

The amendments I am proposing would direct the Administrator of EPA to assist ocean dumpers in developing a firm and precise timetable for ending the ocean dumping of nondredged materials by the 1981 termination date prescribed in the act, and make them stick to it. This provision does not impose an unreasonable or unattainable requirement on ocean dumpers. In consultations with EPA, I have learned that there is no reason ocean dumpers cannot cease such activities by 1981. A program to insure just that has been underway for some time. A program funded under the Federal Water Pollution Control Act is now providing grants to communities and sewage authorities so that they may expeditiously develop alternatives to ocean dumping. Alternatives to such sludge disposal exist and are currently utilized on a limited basis by many dumpers. Given the continued technical and financial assistance and a clear new legislative mandate, I believe EPA could impress upon ocean dumpers the need to shift to other means of disposal sooner than they would under present regulations. By integrating a firm ocean dumping phaseout schedule with present assistance for alternatives and accelerated research into new disposal techniques, I am confident that we can develop alternatives and meet our goal to end dumping by 1981.

One of the major weaknesses on the ocean dumping regulatory program has been the ineffective Coast Guard surveillance of dumping operations. Under MPRSA, the Coast Guard is responsible for conducting surveillance to prevent unlawful transportation and dumping of wastes into the ocean. To carry out its responsibilities, the Coast Guard provides surveillance on a selected basis through vessel boardings, by vessel patrols and helicopter overflights of the dump sites, and through the use of ship riders. Unfortunately, the Coast Guard does not have an adequate surveillance program.

A report to Congress issued earlier this year by GAO entitled "Problems and Progress in Regulating Ocean Dumping of Sewage Sludge and Industrial Wastes" revealed that the Coast Guard did not meet its established surveillance goals for 1975. The report cited failure to meet specified minimum inspection goals, a minimal use of ship riders, and ineffective observation of dumping operations. Therefore, I have included a provision in my bill which would require rigid surveillance procedures to be implemented until ocean dumping can be eliminated. Until ocean dumping of municipal and industrial wastes can be phased out, a strong regulatory program is needed to minimize the potential harmful effects of ocean dumping. I am confident that increased surveillance actions taken by the Coast Guard will greatly reduce any degradation to our marine environment.

Another provision in this legislation would authorize the Administrator of EPA to levy an environmental assessment fee on an ocean dumping permit applicant. EPA may currently require that an ocean dumper conduct special studies as a condition for an interim permit. The findings from these studies are then used by EPA in reviewing future permit applications. It seems to me that it is inherently difficult for an applicant to conduct an objective study which may result in EPA denying any renewal application. The fee authorized by this legislation would be used to fund independent studies and prevent vested interests from directing their own studies. This would help insure that any ocean dumping permitted through 1981 will not have an adverse impact on our coastal environment.

Until we can eliminate ocean dumping as a method of disposal, I believe we ought to pursue investigations into the feasibility of dumping beyond the Outer Continental Shelf. MPRSA states that in recommending ocean dumping sites, the Administrator of EPA shall "utilize wherever feasible locations beyond the edge of the Continental Shelf." I fully understand the potential difficulties and costs of dumping this far off the coast, and I certainly do not subscribe to the "out of sight, out of mind" philosophy. Since my legislation calls for a statutory 1981 termination date, it is apparent that the out of sight cliche does not apply. But I believe that, until we can phase out dumping altogether, every effort must be made to investigate the advantages of moving present dump sites farther off our coasts. When we recognize that present dumping goes on at sites selected on no better than historical usage, it becomes even more imperative that we accelerate efforts to study deepwater dumping and resolve unanswered scientific questions. By providing direct Federal assistance to those engaged in ocean dumping operations for demonstrating the feasibility of going beyond the Continental Shelf, we can ultimately determine the practicality of deepwater dumping as an interim measure to protect our precious coastlines.

This bill also establishes a program for removing sludge discharges which are hazardous to human health and welfare or dangerous to other living organisms. Recently, many beaches in New Jersey were closed due to sludge and other solid wastes which washed ashore. While the effective prevention of such discharges is the only sure way to avoid recurrences, a mechanism is also needed to expedite the cleanup of these dangerous sludge spills which have occurred. The sludge removal provisions in my bill would provide Federal financial aid and establish a strike force for assisting States and local governments in removing sludge discharges. It is unconscionable that either the inability to fix the responsibility for removing such unhealthy discharges or the lack of funds and technical expertise to undertake cleanup activity postpones immediate action to remove a sludge spill. By directing EPA to devise a plan to coordinate and assist in cleanup programs, we can eliminate delays and minimize adverse health or environmental impacts.

Mr. President, as we develop new and improved air and water technology, we discover that more and more toxic and unusable wastes end up as sludge. I believe it is incumbent upon us to develop an effective means for controlling this waste material. This legislation would be an important step in providing just such a sludge control policy.

By Mr. LAXALT (for himself and Mr. CANNON):

S. 1674. A bill to amend the Internal Revenue Code of 1954 with respect to employer's duties in connection with the recording and reporting of tips; to the Committee on Finance.

Mr. LAXALT. Mr. President, as you know, present law requires employees to report to their employers all tips received and retained after any tip pooling or splitting arrangement. Prior to 1976 the employer was only required to pass through the information received from the employee to the Internal Revenue Service. In 1976, however, the Internal Revenue Service attempted to change that. Revenue Ruling 76-231 held that all charge account tips, whether or not reported by the employee, must be reported to the Internal Revenue Service by the employer. The employer's infor-

mation reporting was to be used as a check against the amount reported by the employee on his income tax return. In the event that that amount differed from the total amount of tips reported by the employer the employee would be required to explain the difference in an attachment to his own income tax return.

There are a number of problems occasioned by the IRS ruling. Certainly additional and burdensome recordkeeping requirements figure prominently among these. The principal problem, however, is that because of tip splitting and tip pooling arrangements the employer, although possessing records of the total amount of charge tips, will not have any clear mechanism for breaking down the total on a per-employee basis.

Last year the Finance Committee found that the information passed through by employers in reporting the employees' tips to the Internal Revenue Service was entirely appropriate and that the IRS Revenue Ruling 76-231 should be nullified. Under the Finance Committee version of H.R. 10612, which subsequently passed the Senate, the only employee tips which the employer would have to report are those tips reported to the employer by the employee under present law. Also employers would not have to be required to maintain a running tabulation of the allocation of total charge account tips to any particlar employee. The only record which employers would be required to retain in connection with charge account tips would be the statement of tips as furnished by the employees and the charge account receipts.

Although the Finance Committee provision repealing IRS Revenue Ruling 76-231 passed the Senate, the Senate-House conferees on H.R. 10612 subsequently agreed to drop the Senate provision nullifying the ruling. They did, however, postpone its effective date until January 1, 1979.

Mr. President, together with my distinguished senior colleague HOWARD CANNON, I am today introducing legislation to repeal Revenue Ruling 76-231 completely. I ask unanimous consent that the text of our legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1674

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 6001 of the Internal Revenue Code of 1954 (relating to notice or regulations requiring records, statements, and special returns) is amended by adding at the end thereof the following: "The only records which an employer shall be required to keep in connection with charged tips shall be charge receipts and copies of statements furnished by employees under section 6053(a).".

(b) Section 6051(d) of such Code (relating to statements to constitute information returns) is amended by adding at the end thereof the following: "Any statement filed with the Secretary pursuant to this section shall constitute, and shall be in lieu of, the information return required to be made under section 6041. The only tips which an employer shall be required to report on any such statement shall be tips which are reflected on statements furnished by employees under section 6053(a).".

SEC. 2. The amendments made by this Act apply to taxable years beginning after December 31, 1978.

By Mr. HATHAWAY:

S. 1675. A bill to assure that an individual or family, whose income is increased by reason of a general increase in monthly social security benefits, will not, because of such general increase, suffer a loss of or reduction in the benefits the individual or family has been receiving under certain Federal or federally assisted programs; to the Committee on Finance.

Mr. HATHAWAY. Mr. President, today I am pleased to introduce a bill to correct an inequity in our social security system. The purpose of the bill is to disregard social security in determining the amount of allowable income for those individuals and families who receive benefits from other Federal or federally assisted programs such as supplemental security income, SSI, aid to dependent children, AFDC, and veterans.

As social security benefits have increased to keep pace with increases in the cost of living, many people have found that other benefits which they have been receiving through Federal programs have been cut. The same result will occur when the 5.9-percent increase take effect with the June social security checks. I have recently received a letter from a woman in Brewer, Maine, who wrote:

If possible will you explain why when we get a cost-of-living increase in social security a like amount is deducted from the supplemental income. The cost-of-living increase is no increase at all. I am a 77 year old great grandmother and am 95 percent blind. I am truly grateful for social security but cannot understand the deductions from the Supplement income.

Last year I was pleased to cosponsor Senator Hugh Scott's bill, S. 445. My bill is a followup to this legislation which was unfortunately not enacted last year. Although we made several technical improvements in the social security during the last Congress, we have not eliminated the hardships which are caused by the offsets required when social security benefits are increased.

My bill provides that no individual or family whose income is increased because of increases in social security benefits will suffer a loss of or reduction in benefits under various Federal or federally assisted benefit programs. These other benefits will include supplemental income, aid for dependent children, medicare, and veterans pensions. An individual receiving benefits for the month immediately preceding the month the social security benefit increase takes effect will be entitled to those benefits and will not have total income reduced as a result of the increases in social security.

The consolidation of various Federal benefit programs as part and parcel of a welfare reform measure may take time to complete. My bill will assure that effective immediately beneficiaries of these programs will not suffer hardship by losing some benefits due to increases in social security benefits. I am deeply concerned that many individuals and families suffer hardship when the intent of the cost-of-living increases is to provide relief for the disadvantaged.

Mr. President, I urge my colleagues to recognize the need for this remedial legislation and to take prompt action to end the burden imposed upon millions of Americans.

I ask unanimous consent that the text of my bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1675

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a), in addition to any other requirement imposed as a criterion for determining eligibility to participate in or receive benefits provided by, or for determining the amount, type, or quantum of benefits to be provided under, any plan or program—

(1) which is designed to provide benefits to individuals or families who meet prescribed conditions,

(2) which establishes need (based on lack of or smallness of income or resources) as a criterion for determining eligibility of individuals or families to participate therein or receive the benefits provided thereunder, or for determining the amount, type, or quantum of benefits to be provided to individuals or families thereunder, and

(3) which is (A) a Federal plan or program, or (B) is a plan or program of a State (or political subdivision thereof) which is funded (wholly or in part) by Federal funds, there is hereby imposed the requirement that, in determining under such plan or program the income or resources of any individual who (or any family the members of which include any individual who), for the month immediately preceding the first month with respect to which a general social security benefits increase becomes effective, was—

(4) a recipient of benefits (or a member of a family which was a recipient of benefits) under such plan or program, and

(5) received (or had previously established entitlement to) a monthly insurance benefit under section 202, 223, or 228 of the Social Security Act,

there be disregarded any amount received by such individual—

(6) which is attributable solely to such general social security benefits increase, and

(7) for or with respect to any consecutive period of months (beginning with the first month with respect to which such general social security benefits increase became effective) with respect to each of which such individual is—

(A) a recipient of benefits (or a member of a family which is a recipient of benefits) under such plan or program, and

(B) entitled to such monthly insurance benefit.

For purposes of paragraph (7)(A), an individual shall be deemed to be a recipient of benefits (or a member of a family which is a recipient of benefits) under such plan or program for any period after the date of enactment of this Act with respect to which the requirement imposed by this subsection is not complied with if he would have been eligible to receive such benefits (or was a member of a family which would have been eligible to receive such benefits) had such requirement been complied with during such period.

(b) The requirement imposed by subsection (a) shall be applicable in the case of general social security benefit increases which become effective after March 1974, and shall be effective in determining eligibility

to participate in or receive benefits under (and in determining the amount type, or quantum of benefits under) a plan or program referred to in such subsection for periods after March 1974.

(c) The requirement imposed by subsection (a) with respect to any plan or program shall be deemed not to have been violated, in the case of any individual who immediately prior to the effective date of a general increase in the level of benefits provided under the plan or program (as determined in accordance with regulations of the Secretary of Health, Education, and Welfare) was entitled to have any amount of social security income disregarded because of such requirement, solely because the total amount of social security income which was so required to be disregarded (in the case of such individual) immediately prior to such general increase is, on or after the effective date of such general increase, reduced (but not below zero) by an amount equal to the amount of such general increase.

(d) Notwithstanding any other provision of law, no Federal funds shall be paid to any State (or political subdivision thereof) with respect to any expenditures made under any plan or program (referred to in subsection (a)) for any period which commences on or after the first day of the first calendar month which begins more than 60 days after the date of enactment of this Act, unless, for such period, such plan or program is operated so as to comply with the requirement imposed by subsection (a).

SEC. 2. It shall be the duty of the Secretary of Health, Education, and Welfare to promulgate such rules and regulations as may be appropriate to assure the uniform implementation of the provisions of the first section of this Act; and such Secretary shall furnish appropriate information and data to and shall otherwise cooperate with and assist other Federal agencies with a view to assuring compliance with the provisions of such section.

By Mr. INOUYE:

S. 1676. A bill to amend an emergency flood control authorization in order to authorize emergency protection work in the event of anticipated volcanic eruption; to the Committee on Environment and Public Works.

Mr. INOUYE. Mr. President and my colleagues, today I rise to introduce legislation that is of the utmost importance to my State, and in particular, to the residents of the city of Hilo on the big island of Hawaii.

My bill, which would amend the Flood Control Act approved on August 18, 1941, in order to authorize emergency protection work in the event of anticipated volcanic eruption, is needed now so that the people of Hilo can be assured that they will be protected from the lava flows emanating from Mauna Loa, which is expected to erupt before July of 1978.

In February of 1976, the U.S. Geological Survey's Hawaiian Volcano Observatory prepared a report on Mauna Loa entitled, "Mauna Loa Volcano—The Past, Present, and Prospects for the Future." Although I will highlight the most salient aspects of this report, I ask unanimous consent that this brief report be made a part of the RECORD at the conclusion of my statement.

One of the largest and most active volcanoes on Earth is Mauna Loa. In the past, Mauna Loa has erupted about every 3 to 4 years, although at irregular intervals. Prior to July 1975, however, Mauna Loa had not erupted since June 1950. In all of Mauna Loa's recorded activity, this 25-year period of dormancy has been the longest hiatus or interruption between eruptions.

The eruption, which occurred on July 5–6, 1975, was small by Mauna Loa standings—less than 30 million cubic metres of lava were erupted. The details of this eruption, however, are unimportant, compared to what this eruption portends for Hawaii county for the future. During our recorded history, summit eruptions of the type that occurred in July of 1975 are almost invariably followed by larger flank eruptions. These flank eruptions generally occur on one of the two rift zones of Mauna Loa—the southwest rift or the northeast rift. Eruptions that occur on the southwest rift can threaten South Kona and western Ka'u; eruptions that occur on the northeast rift can flow toward Hilo, threatening a population of approximately 38,000.

During the week following the eruption of July 1975, thousands of small to medium-sized earthquakes occurred beneath Mauna Loa. These quakes were concentrated along the northeast rift of the volcano, between an altitude of 9,000 and 10,000 feet. Thus, the seismic pattern suggests that large volumes of magma were injected into the northeast rift, and that much of it will be erupted to the surface at some future time.

Since 1852, six eruptions have occurred along Mauna Loa's northeast rift, and each of these eruptions was preceded by one or more summit eruptions. For more information, about the seismic and volcanic pattern of Mauna Loa's recorded activity, I wish to refer you to figure 1 of the U.S. Geological Survey's February 1976 report. The most common pattern of the Mauna Loa eruptive cycle is that represented by the 1940–42 sequence. The 1940–42 eruption consisted of three distinct phases—a summit eruption in April of 1940, another summit eruption in April of 1942, and a rift outbreak which followed the second summit eruption by 2 days.

This cycle of separate eruptions: summit—summit—flank, constitutes the typical Mauna Loa eruptive pattern. This basic cycle has been repeated in various combinations for all historic Mauna Loa eruptions, however, it is especially striking for the last three eruptions from the volcanoe's northeast rift.

Thus, because of the historical precedent, the U.S. Geological Survey's Hawaiian Volcano Observatory has concluded that the eruption of July 5–6, 1975, was merely the first of three phases that will culminate in a flank eruption. In addition, based on the July 1975 seismic activity, they consider it likely that the northeast rift has already been "primed," and that a future eruption will take place from that rift. It is on these grounds that the observatory scientists have predicted that the expected flank outbreak will occur before July of 1978.

One unfortunate circumstance that has hindered the work of the staff of the Hawaiian Volcano Observatory is the fact that they have been unable to locate the situational maps that were made to track the lava flow of the eruption most similar to that expected to occur by July of 1978. The 1940–42 eruption occurred at a time when the Territory of Hawaii was under martial law. For that reason, and the fact that experiments were undertaken with explosive ordnance in order to divert the lava flow from the 1940–42 eruption, the situational maps that were made were classified and very little information was released to the public. After checking with the National Archives, it seems apparent that this most important data has been misplaced or lost. However, funds have been made available already through the commander in chief of the Pacific for the experimentation with explosive ordnance at the range at Pohakuloa on the big island of Hawaii, in order to better prepare for the expected eruption of Mauna Loa.

The purpose of my bill is to insure that funds are authorized to be expended in order to undertake other emergency protection work in preparation for the future eruption of Mauna Loa.

The next Mauna Loa eruption will be a small summit outbreak, the second of the three phases that typically constitute a complete Mauna Loa eruptive cycle. The summit eruption is expected to be brief, lasting only 1 to 5 days and lava will largely be confined to Mokuaweoweo Caldera—the large crater at Mauna Loa's summit. It will be followed immediately, however, by an outbreak lower down on the flank of Mauna Loa, probably on the northeast rift between an altitude of 9,000 and 10,000 feet.

Initially, the U.S. Geological Survey's Hawaiian Volcano Observatory staff predicts that low fountains from a new fissure will form a "curtain of fire" 1–2 miles long, and lava will be erupted at very high rates, flowing as far as 10 miles downslope in the first 48 hours. However, there is hope that if the flow moves in the direction of Hilo, located 30 miles from the summit, it will rapidly decrease in velocity after about 2 days, due to four factors:

First. The lava front will be farther from its vent supply area;

Second. The slope of the terrain becomes more gentle closer to Hilo;

Third. The thick vegetation encountered at about 5,000 feet elevation slows the advance of the lava;

Fourth. The higher rainfall further downslope might cause additional cooling and slowing of the lava.

Nonetheless, the observatory staff predicts that lava could eventually reach Hilo if a sufficiently high rate of lava eruption continues for a certain length of time. In the spring of 1881, for example, lava reached within about 1 mile of Hilo Harbor; Kaumana is mostly constructed on 1881 lava. Only a fortuitous splitting of the 1880/81 flow into three segments near the source vents high on the northeast rift saved Hilo—if these three flows had consolidated and flowed in the same direction, much of Hilo and its harbor would have been destroyed. In conclusion, if allowed to flow unimpeded, lava from a future Mauna Loa eruption could destroy large parts of Hilo.

At this time various Federal and State governmental agencies and branches of the military are involved in planning for the diversion of lava from destructive

paths that may threaten Hilo. The U.S. Geological Survey's Hawaiian Volcano Observatory is providing technical advice to Government agencies who will be responsible for lava diversion efforts, and it is establishing a better monitoring system to provide an early warning of renewed eruptive activity from Mauna Loa.

Gentlemen, in view of the many preparations that must be made in the next few months in order to cope with the expected eruption of Mauna Loa, I urge speedy consideration and passage of my bill so that all emergency protection work necessary may be authorized and may proceed on schedule. Thank you for your attention to this most important matter for the people of Hawaii.

I ask unanimous consent that an article that appeared in the New York Times on May 18, 1977, be printed in the RECORD, and I ask, that the text of my bill, as well as the U.S. Geological Survey's report that I have paraphrased at points in this statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, May 18, 1977]

CLOSE WATCH KEPT ON HAWAII'S RUMBLING VOLCANO THAT SCIENTISTS SAY SHOULD ERUPT BY JULY OF 1978

(By John Noble Wilford)

HAWAII VOLCANOES NATIONAL PARK.—The summit and slopes of the mountain are swelling slightly but menacingly. Deep underfoot, unseen but not undetected, molten rock churns with heat and gathering pressure. It seeps through subterranean crevies, probing with all its pent-up might for a way out.

These are the ominous signs, scientists say, that the world's largest active volcano, Mauna Loa, is building up for an eruption.

Based on the volcano's past behavior and the rumblings that register on the seismographs daily, sometimes every few minutes, scientists at the United States Geological Survey's Hawaiian Volcano Observatory here are predicting that Mauna Loa should unloose a major flow of lava anytime between now and July 1978. They first made the prediction more than a year ago and have seen nothing in recent days to change their minds.

If they are right, a river of devastating lava would probably flow in the direction of Hilo, a city of 35,000 people about 30 miles from the summit. Several times in recorded history, lava has reached what are now the city's outskirts. Indeed, the entire island, the state's big island of Hawaii, is the creation of volcanoes that rise from the floor of the sea.

If the scientists are wrong and Mauna Loa contains itself through July 1978, it would be no cause for relaxation, only confirmation once again of the fallability of those who venture predictions about Earth's more violent tendencies.

PREDICTIONS FAR FROM PRECISE

Gordon P. Eaton, the 48-year-old head of the observatory, is the first to concede that predictive volcanology is far from a precise science.

"We don't have a theoretical model for predictions," he said. "We are more like social scientists. They see that people usually behave in a certain way and make predictions accordingly, but sometimes people act differently. That's the way it is in studying and predicting volcanoes."

Yet Dr. Eaton and the 16 scientists and technicians who live in the shadow of Mauna Loa, elevation 13,700 feet, and work at the observatory on the rim of another volcano, Kilauea, elevation 4,000 feet, believe that by making a great outdoor laboratory of the two volcanoes, they are improving the odds in eruption predictions.

They have implanted 43 seismometers in the area, the densest such network in the world. They have 83 tiltmeter stations in operation, sensitive to the slightest swelling or subsidence of the volcanic slopes. With laser instruments, they periodically measure precisely surveyed lines to see if there has been any expansion or contraction, particularly in the rift zones from which lava so often erupts. And they frequently remap the gravity and magnetic fields for signs of changes in the internal structure of the volcanoes.

Aside from providing clues to impending eruptions, such a comprehensive and systematic monitoring of the Hawaiian volcanoes is expected to add to the general knowledge of volcanoes. The Geological Survey hopes to adapt the monitoring methods developed here for use in the nation's other volcanic regions, in Alaska and in the Cascade Range of California, Oregon and Washington.

OBSERVATORY FOUNDED IN 1912

This is what Thomas A. Jaggar had in mind when he founded the observatory in 1912. The Massachusetts Institute of Technology geology professor had studied volcanoes in Italy, Japan and Costa Rica and thought there should be a permanent observatory.

The observatory, situated in the national park, is a modest complex of low metal buildings. From the windows Dr. Eaton can look out on the broad crater of Kilauea, an awesome sight that in 1866 moved Mark Twain to write: "Here was a yawning pit upon whose floor the armies of Russia could camp, and have room to spare."

Kilauea appeared serene. Some wisps of steam poured out of vents, but there were no pools of fresh red lava. But for the inside story, Dr. Eaton looked to the five drum seismographs standing near the window, rotating slowly, leaving squiggly traces or to the bank of computers in the next room. The computers receive, digest and store the radioed signals from all the observatory's seismic network.

"In the earlier days the observations were mostly visual," Dr. Eaton said. "But now we're so instrumented that we could function very well without being in view of the crater."

The night before, Dr. Eaton noted in checking the seismographs, a "shallow harmonic termor" caused the ground to shake for about 20 minutes. If it had been a real shaker, alarms would have gone off in the homes of Dr. Eaton and several other scientists.

"We've had a number of tremors like that lately," Dr. Eaton explained. "It means that magma [molten rock] is moving somewhere down there. Mauna Loa had an eruption in July 1975 and many tremors before and after. Kilauea had a 7.2 [Richter scale] earthquake in November 1975. That so broke up the internal structure of the volcano that it is still in the process of reconsolidating and healing."

Every day the scientists and technicians trek out over their unstable terrain, installing or checking instruments and surveying for signs of movement.

John Forbes goes early each morning to a vault built into the side of Kilauea's outer slope. Recently, he took a visitor through triple doors into an inner sanctum of seismology, where he changed the film for one of the key seismometers in the network.

Over on Kau desert, a volcanic wasteland southwest of the Kilauea crater, Mr. Forbes pointed to some of the newest rock on Earth. This is where the lava flows every few years, most recently in 1971 and 1974, killing off nearly everything and leaving a smooth, lustrous sheet of coled lava, called pahoehoe. It is cracked here and there like city asphalt, and fern takes root in some of the cracks. It crunches underfoot like styrofoam and often collapses.

Sometimes, when the wind shifts, the air becomes acrid, as Mark Twain had observed. "The smell of sulfur is strong," he wrote, "but not unpleasant to a sinner."

SENSING DEVICES TESTED

On the floor of a smaller crater, Kilauea Iki, engineers from Sandia Laboratories in Albuquerque were testing the reliability of geophysical sensing devices in detecting buried molten rock. These could be useful in finding deposits of magma elsewhere in the world that could be new sources of energy. Scientists are hoping to convert the magma heat to electricity as they can do with geothermal steam energy.

But no one wants to drill for magma until he is sure it is there. Since it is already known that at Kilauea Iki a 100-foot-deep pool of molten rock lies 150 feet under the crater floor, the crater has become a calibrating standard for testing the accuracy of detection instruments. If seismic or electric probes correctly spot the magma chamber there, they should be able to do so elsewhere.

The observatory's most immediate concern, however, has to do with eruption forecasting. And when an eruption alert is sounded, all members of the staff spring to action. They want to be ready to photograph the eruption, observe flow direction, sample lava and gases and measure changes in the terrain.

There was a burst of seismic activity back in February, and one night it looked as if an eruption at Kilauea was imminent. Lennart Anderson, one of the scientists, remembers it well, for that was the night he engaged in what he called some "seat-of-the-pants seismology."

"We went into the area of the most pronounced shocks," Mr. Anderson said. "If you stood there, you didn't feel a thing. So I sat down on the road. There were four of us sitting there on the pavement. We agreed that all four of us had to feel something for it to be counted. It felt like someone was operating a piledriver off in the distance. We got so we could even get the direction of the shockwaves."

Later, Mr. Anderson went back and found that a new crack had opened in the earth not more than 100 feet from where he had been sitting on the road. "I don't know if I would do that sort of thing again," Mr. Anderson remarked.

In a more scientific vein, Mr. Anderson is experimenting with the use of electric currents and fields in exploring the volcanoes' changing internal structures. The work is based on the principle that magma is more conductive than solid rock and thus it should be possible to map its ebb and flow. Networks of permanently implanted electrodes are planned as yet another means of keeping watch on Kilauea and Mauna Loa.

Few areas of geology are as exciting as volcanology, according to Dr. Eaton. He grew up in Ohio, where, he said "there hasn't been a volcano in hundreds of millions of years." He "got hooked" on geology at Wesleyan University, worked summers gathering data on farm wells in Connecticut and earned his doctorate in geology and geophysics at the California Institute of Technology.

"So much of geology is working with a carcass, like a detective with a dead body," Dr. Eaton said. "You have to work backward from what you see and figure out how and why it happened. Here, you're observing the processes as they actually occur. It's a geologically dynamic situation, always active and always changing."

PRELIMINARY SIGNS

The dynamics of Mauna Loa are Dr. Eaton's most immediate concern. Over the last century the volcano has exhibited a typical eruptive cycle: a summit eruption, followed by another summit eruption and then a rift outbreak on the northeast flank.

An eruption occurred on Mauna Loa's summit in July 1975, the first in 25 years. This ended the volcano's longest dormancy in recorded history; it usually erupts on an average of every three or four years.

Although the 1975 eruption was small by Mauna Loa's standards, a series of earthquakes followed the eruption, which suggested to observatory scientists that large volumes of magma were moving into the northeast rift zone, primed for a future eruption.

If the scientists should begin detecting a build-up in the number and intensity of tremors in that area, they believe they will have a few days to prepare for the predicted major eruption.

"There's no way we can stop a lava flow," Dr. Eaton told state and local officials at a recent planning meeting. "The only thing we can do is try to 'steer' it, or make it flow more broadly so that it will cool faster.

The observatory has four contingency plans. The first is to use a technique tried successfully by Dr. Jaggar in 1935, aerial bombing. The intent would be to disrupt the vents and channels to spread the flow, hoping it will cool and freeze in its tracks well before reaching Hilo.

Other methods include bulldozing walls of rubble to block the flow in narrow valleys and, if that should fail, pumping in ocean water to cool the lava. Iceland has used the latter technique to good effect, Dr. Eaton said, but it would be more difficult in Hawaii because of the greater elevations from the sea.

As a last resort, Dr. Eaton said, Hilo would have to be evacuated.

Meanwhile, the volcano continues to swell and shake, and scientists of the Hawaiian Volcano Observatory maintain their vigil, keep an instrumental finger on the pulse of the volcano and hope they have learned enough to be able to sound the alert well before Mauna Loa's next big show.

S. 1676

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Flood Control Act approved August 18, 1941 (33 U.S.C. 701n) is amended by inserting at the end thereof the following: "The Chief of Engineers is also authorized to accomplish advance measures using amounts in the emergency fund, when in his discretion local and State efforts are unable to complete emergency work for control of lava flow, in order to provide the minimum necessary protection to prevent loss of life and damages to improved property when such volcanic activity can be predicted or reasonably anticipated.".

MAUNA LOA VOLCANO—THE PAST, PRESENT, AND PROSPECTS FOR THE FUTURE

(A brief administrative report prepared by U.S. Geological Survey, Hawaiian Volcano Observatory)

BACKGROUND

Mauna Loa volcano is one of the largest and most active volcanoes on earth. It has been created by repeated volcanic eruptions that have slowly built up the edifice of the volcano over the past several hundred thousand years. During the time of written history, Mauna Loa has erupted at irregular intervals averaging three to four years. Prior to July 1975, however, Mauna Loa had not erupted since June 1950. This 25-year period of dormacy was the longest rest in Mauna Loa's recorded history.

The eruption of July 5–6, 1975, was small by Mauna Loa standards—less than 30 million cubic meters of lava were erupted. The importance of this eruption to Hawaii County lies not in the details of the eruption, however, but in what this eruption likely portends for the future. In the time of written history, summit eruptions of the sort that occurred in July 1975 are almost invariably followed by larger flank eruptions. These flank eruptions generally occur on one of two rift zones of Mauna Loa—the southwest rift or the northeast rift. Eruptions which occur on the southwest rift can flow downslope, threatening south Kona and western Ka'u. Eruptions on the northeast rift can flow toward Hilo.

Thousands of small- to medium-sized earthquakes occurred beneath Mauna Loa during the week following the eruption of July 1975. These quakes were concentrated along the northeast rift of Mauna Loa, between an altitude of 9,000 and 10,000 feet. Thus the seismic (earthquake) pattern suggests that large volumes of magma were injected into the northeast rift, and that much of it will be erupted to the surface at some future time.

Six eruptions have occurred along Mauna Loa's northeast rift since 1852. Each of these eruptions was preceded by one or more summit eruptions (see fig. 1). The most common pattern of the Mauna Loa eruptive cycle is exemplified by the 1940–1942 sequence. The 1940–42 eruption consisted of three distinct phases—a summit eruption in April 1940, another summit eruption in April 1942, and a rift outbreak which followed the second summit outbreak two days later.

This trilogy of separate eruptions, summit—summit—flank, constitutes the typical Mauna Loa eruptive cycle. This basic cycle has been repeated in various combinations for all historic Mauna Loa eruptions, but is especially striking for the last three eruptions from the volcano's northeast rift (fig. 1).

Thus, because of the historic precedent, it is thought that the eruption of July 5–6, 1975, was merely the first of three phases which will culminate in a flank eruption. Because of the July seismic activity, it is considered likely that the northeast rift has already been "primed," and that the future eruption will take place from that rift. Based on the historic pattern, the expected flank outbreak may occur between January 1976 and July 1978.

HYPOTHETICAL SCENARIO FOR A POSSIBLE FUTURE ERUPTION OF MAUNA LOA

History suggests the next Mauna Loa eruption will be a small summit outbreak, the second of the three phases which typically constitute a complete Mauna Loa eruptive cycle. This summit eruption will be brief, lasting only one to five days and lava will largely be confined to Mokuaweoweo caldera—the large crater at Mauna Loa's summit. It will immediately be followed by an outbreak lower down on the flank of Mauna Loa, probably on the northeast rift between an altitude of 9,000 and 10,000 feet.

Initially, low fountains from a new fissure will form a "curtain of fire" 1–2 miles long, and lava will be erupted at very high rates, flowing as far as ten miles downslope in the first 48 hours. If the flow moves in the direction of Hilo, it will rapidly decrease in velocity after about two days, owing to four factors:

(a) the lava front will be farther from its vent supply area,

(b) the slope of the terrain becomes more gentle closer to Hilo,

(c) the thick vegetation encountered at about 5,000 feet elevation slows the advance of the lava,

(d) the higher rainfall further downslope might cause additional cooling and slowing of the lava.

Despite these factors that will slow the rate of lava advance toward Hilo, lava nonetheless could eventually reach Hilo if a sufficiently high rate of lava eruption continues for a sufficient period of time. In the spring of 1881, for example, lava reached within about one mile of Hilo Harbor; Kaumana is mostly constructed on 1881 lava. Only a fortuitous splitting of the 1880/81 flow into three segments near the source vents high on the northeast rift saved Hilo—if these flows had consolidated and flowed in the same direction, much of Hilo and its harbor would have been destroyed. If allowed to flow unimpeded, lava from a future Mauna Loa eruption could destroy large parts of Hilo.

LAVA DIVERSION

Much has been learned in the past forty years about the manner in which molten lava flows long distances; observations by Geological Survey scientists at the Mauna Ulu vent of Kilauea Volcano during 1969–1974 have been especially instructive. These observations show that diversion of lava flows to nondestructive paths is feasible. Diversion of lava away from harmful paths is especially possible above Hilo because of three principal factors:

(a) expected eruptive vents are a very long distance from Hilo (25 miles or more), allowing time for action,

(b) the slope of the ground above Hilo is low,

(c) there is a great deal of government-owned land above Hilo onto which lava could be diverted with a minimum of legal and environmental problems.

Because of these factors, the U.S. Geological Survey's Hawaiian Volcano Observatory is heavily involved in providing guidance to civil agencies who are best able to effect lava diversion in the event lava flows threaten Hilo in the future.

Experience gained in Hawaii, and from eruptions in other areas, has indicated that lava flows can be diverted by three main methods:

(a) disruption of feeding channels within flows by hand-emplaced or aerially delivered explosive charges,

(b) construction of earthen barriers to divert lava flows,

(c) application of very large volumes of water to lava flow fronts in order to cool the lava in critical areas to form "lava barriers" of solidified rock.

Each of these three methods has been tried in Hawaii against threatening lava flows in the past, and it has been demonstrated that each method can be effective under proper conditions. Since the exact conditions cannot be predicted in advance of an actual eruption, the Hawaiian Volcano Observatory is recommending that contingency plans be prepared in advance to implement each method should it be needed. Explosive disruption and water application would involve resources of the Hawaii CINCPAC military forces, and lava barrier construction would be coordinated by the U.S. Army Corps of Engineers. The Hawaiian Volcano Observatory is presently providing technical guidance to these agencies in formulating their plans for a response should a threat develop and should these agencies be called on by government authorities to respond.

Simultaneously, the Hawaiian Volcano Observatory is greatly expanding its monitoring capabilities of Mauna Loa to give the earliest possible warning of the impending eruption. In the past year the number of seismic stations on Mauna Loa's summit has been tripled, 19 tilt-monitoring stations have been

installed, and extensive distance-measuring survey networks have been established at five localities to measure swelling of the volcano. Further expansion of the Observatory's monitoring capabilities on Mauna Loa is planned if the weather and resources permit.

SUMMARY

The historic pattern of Mauna Loa eruptions suggests that the eruption of July 5-6, 1975, is the precursor of a large flank eruption that might occur before July 1978. Seismic evidence suggests this flank eruption will occur on the northeast rift, and thus could pose a threat to the city of Hilo. If lava flows threaten Hilo, diversion of lava from destructive paths may be required to save parts of the city. The U.S. Geological Survey's Hawaiian Volcano Observatory is providing technical advice to government agencies who will be responsible for lava diversion efforts, and it is establishing a better monitoring system to provide an early warning of renewed eruptive activity from Mauna Loa.

ADDITIONAL COSPONSORS

S. 563

At the request of Mr. STONE, the Senator from Mississippi (Mr. EASTLAND) was added as a cosponsor of S. 563, relating to the Interstate Highway System.

S. 716

At the request of Mr. INOUYE, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 716, relating to cost-of-living allowances for certain employees living outside the United States.

S. 790

At the request of Mr. DOMENICI, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 790, the Inland Navigation Improvement Act.

S. 834

At the request of Mr. SCHWEIKER, the Senator from Minnesota (Mr. ANDERSON) was added as a cosponsor of S. 834, to amend the Internal Revenue Code.

S. 865

At the request of Mr. BROOKE, the Senator from Maryland (Mr. SARBANES) and the Senator from Vermont (Mr. STAFFORD) were added as cosponsors of S. 865, relating to apportionments in the civil service in the District of Columbia.

S. 1503

At the request of Mr. THURMOND, the Senator from California (Mr. HAYAKAWA) and the Senator from Minnesota (Mr. ANDERSON) were added as cosponsors of S. 1503, relating to the ban on the use of the chemical Tris.

S. 1590

At the request of Mr. DOMENICI, the Senator from Florida (Mr. CHILES) was added as a cosponsor of S. 1590, to incorporate the American Ex-Prisoners of War, Inc.

SENATE RESOLUTION 182

At his own request, Mr. MCCLURE was added as a cosponsor of Senate Resolution 182, relating to diplomatic relations with Cuba.

AMENDMENT NO. 369

At the request of Mr. HELMS, the Senator from Utah (Mr. GARN) and the Senator from Arizona (Mr. GOLDWATER) were added as cosponsors of amendment No. 369 intended to be proposed to S. 717, the Mine Safety Act.

SENATE RESOLUTION 189—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES

(Placed on the calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported the following resolution:

S. RES. 189

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Rules and Administration is authorized from July 1, 1977, through February 28, 1978, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $399,300, of which amount not to exceed $65,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(1) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1978.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

SENATE RESOLUTION 190—SUBMISSION OF A RESOLUTION TO REFER A BILL TO THE COURT OF CLAIMS

(Referred to the Committee on the Judiciary.)

Mr. MATSUNAGA submitted the following resolution:

S. RES. 190

Resolved, That the bill (S. 1659) entitled "A bill for the relief of Herbert T. Matsuo, Patrick Wayne Matsuo, Susan Villarta, and the estate of Arline L. Matsuo," now pending in the Senate, together with all the accompanying papers, is referred to the Chief Commissioner of the United States Court of Claims. The Chief Commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due from the United States to the claimant.

AMENDMENTS SUBMITTED FOR PRINTING

FEDERAL MINE SAFETY—S. 717

AMENDMENT NO. 391

(Ordered to be printed and to lie on the table.)

Mr. HELMS. Mr. President, I am submitting an amendment to S. 717, the Federal Mine Safety and Health Act of 1977, which would require the Secretary of Labor to conduct all hearings under section 102 of the act in accordance with the Administrative Procedure Act, as codified in title 5, section 554, of the United States Code.

As Senators are aware, the Administrative Procedure Act is presently followed under the existing Metal and Nonmetallic Mine safety Act. This affords some degree of protection to the operator in that it places the burden of proof on the Secretary to show that a proposed standard is actually needed and is technologically feasible.

In its present form, S. 717 sweeps aside the procedural rights of the operators and exposes them to the arbitrary whim of the Secretary. Section 102 of the act baldly states that—

> Hearings required by this subsection shall be conducted by the Secretary, who may prescribe rules and make rulings concerning procedures in such hearings to avoid unnecessary costs or delay.

Mr. President, this provision of the act gives the Secretary carte blanche authority to make any rule that he pleases. It is wholly contrary to the most elementary principles of rule of law. In fact, it not only flies in the face of due process, but also discriminates against the operators by singling them out for exclusion under the Administrative Procedure Act.

Mr. President, simple justice requires that the operators' rights be protected in the same manner as others in proceedings before Federal agencies. This can be accomplished simply by including a requirement in the act that hearings held under section 102 shall be in compliance with the Administrative Procedure Act.

Mr. President, I ask unanimous consent that my amendment be printed in the RECORD.

There being no objection, the amendment was printed in the RECORD, as follows:

AMENDMENT NO. 391

On page 84, strike lines 4 through 7.

MULTILATERAL DEVELOPMENT INSTITUTIONS—H.R. 5262

AMENDMENTS NOS. 392 AND 393

(Ordered to be printed and to lie on the table.)

Mr. HARRY F. BYRD, JR. Mr. President, I submit for printing two amendments to H.R. 5262, the Omnibus Multilateral Development Institutions Act of 1977.

The first amendment would require the President to submit to the Congress an annual report on our foreign aid program.

It would require a comprehensive re-

view of our contributions to multilateral institutions and also a review of our bilateral foreign aid program.

The second amendment provides for a reduction in the authorizations for U.S. contributions to the international financial institutions below that level recommended by the Senate Foreign Relations Committee.

I ask unanimous consent that the text of those amendments be printed in the RECORD.

There being no objection, the amendments were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 392

On page 18, between lines 5 and 6, insert the following new title:

TITLE VIII—REPORT

SEC. 801. (a) Not later than January 15 of each year, the President shall submit to the Congress a complete report on the Total Amount of U.S. Overseas Loans and Grants and also Assistance From International Organizations from July 1, 1945 up to and including an estimate for the Fiscal Year in which such report is made.

(b) This report shall include a listing of all countries which have received any type of loans or grants from the United States since July 1945 and shall also include a cumulative total of those loans or grants. This report shall also include a listing of all countries which have received assistance in the form of loans or grants from any international organization in which the United States has been a member or to which the United States has contributed and shall include a cumulative total of those loans or grants. This report shall include such summary charts as may be useful in determining the total dollar value of United States foreign aid including a summary chart of total contributions or subscriptions by the United States to each international financial institution and such chart shall delineate between paid in and callable capital.

(c) For purposes of subsection (b) the term "international financial institution" means the International Bank for Reconstruction and Development, the International Development Association, the Inter American Development Bank, the International Finance Corporation, the Asian Development Bank, the Asian Development Fund, and the African Development Fund.

On page 18, line 6, strike out "VIII" and insert "IX."

On page 18, line 7, strike out "801" and insert "901."

On page 12, lines 11 and 12, strike out "thirteen thousand and five" and insert in lieu thereof "five thousand three hundred and seventy-one".

On page 12, line 19, strike out "$1,568,-856,318" and insert in lieu thereof "$648,-000,000".

On page 13, line 25, strike out "$2,400,-000,000" and insert in lieu thereof "$1,575,-000,000".

On page 14, line 6, strike out "$2,400,-000,000" and insert in lieu thereof "$1,575,-000,000".

On page 14, line 15, strike out "sixty-seven thousand and five hundred" and insert in lieu thereof "thirty-five thousand, four hundred and seventy-eight".

On page 14, line 23, strike out "814,-286,250" and insert in lieu thereof "$428,-000,000".

On page 15, strike out lines 11 through 24 and redesignate subsequent Titles and Sections accordingly.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION AUTHORIZATIONS—S. 1340

AMENDMENT NO. 394

(Ordered to be printed and to lie on the table.)

Mr. BROOKE submitted an amendment intended to be proposed by him to the bill (S. 1340) to authorize appropriations to the Energy Research and Development Administration.

NOTICES OF HEARINGS

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. MUSKIE. Mr. President, the Subcommittee on Intergovernmental Relations will hold a hearing on Thursday, June 16, concerning greater involvement of State legislatures in appropriating Federal funds to the States.

The hearing will be held at 10 a.m. in room 1114 of the Dirksen Office Building.

CRIMINAL CODE REFORM ACT

Mr. McCLELLAN. Mr. President, I wish to announce that the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary will continue its hearings on S. 1437, the Criminal Code Reform Act of 1977, on June 20, 21, 1977.

The hearings will open each day at 9:30 a.m. in room 2228, Dirksen Senate Office Building.

Additional information on the hearings is available from the subcommittee staff in room 2204 Dirksen Senate Office Building, telephone AC 202-224-3281.

ALASKA NATIONAL INTEREST LANDS AND NATURAL RESOURCE ISSUES HEARINGS

Mr. JACKSON. Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of two public hearings before the Committee on Energy and Natural Resources. These hearings will address natural resource issues in Alaska and, in particular, proposed legislation to designate certain Federal lands in Alaska as units of the National Forest, Park, Wildlife Refuge, and Wild and Scenic Rivers Systems.

The committee has scheduled the first hearing on Friday, June 17, 1977, at 9:30 a.m., in room 3110, Dirksen Senate Office Building, and has extended an invitation to the Department of the Interior to provide witnesses to discuss a wide range of Alaska natural resource issues. Appearing on behalf of the Department will be Under Secretary James Joseph. Mr. Joseph will testify in his capacity of chairman of the Alaska policy group. Accompanying Mr. Joseph will be Ms. Joan Davenport, Assistant Secretary for Energy and Minerals; Mr. Guy Martin, Assistant Secretary for Land and Water Resources; Mr. Robert Mendelsohn, Assistant Secretary-designate for Policy, Budget, and Administration; and Mr. E. U. Curtis Bohlen, Assistant to the Secretary for Alaska National Interest Lands, or their designees.

The hearing will serve two purposes. First, it will provide the committee with an overview of the Department of the Interior's perceptions of Alaska natural resource issues and the manner in which the Department is organized to resolve those issues. Second, the hearing, by providing the Department with the opportunity to present its view on the Alaska national interest lands proposals, will serve as the first of a number of committee hearings to consider that legislation. By combining the first hearing on the legislation with a more general hearing on other significant natural resource issues in Alaska, the committee hopes to place the national interest lands within the broad context of both Alaska and national policies for the conservation and development of natural resources.

Specifically, the Department has been asked to address seven natural resource issues:

One. The Alaska National interest lands legislation;

Two. Implementation of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601);

Third. Departmental participation in the route selection for the Alaska natural gas pipeline and the Department's preparations for the permitting of that transportation system pursuant to the Alaska Natural Gas Transportation Act of 1976 (90 Stat. 2903; 15 U.S.C. 719);

Fourth. The Department's preparations and oversight procedures for the startup and operation of the Trans-Alaska Pipeline System;

Fifth. The Department's plans for oil and gas development on the Outer Continental Shelf off Alaska;

Sixth. Exploration, planning, and administration of the national petroleum reserve pursuant to the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501); and

Seventh. The Department's efforts to relate each of these issues to a general development and transportation strategy for Alaska natural resources.

June 20, 1977, at 9:30 a.m. in room 3110, Dirksen Senate Office Building, the committee will hold its first hearing this Congress devoted specifically to Alaska national interest lands legislation. Pending before the committee at this time are three bills concerning this subject, S. 499, S. 500, and S. 1500. At this hearing, the committee will receive testimony from the Alaska coalition, a group of environmental organizations which are the primary supporters of S. 500 and S. 1500. The witnesses from the coalition are expected to acquaint the committee with the purposes, polices, and provisions of the two bills.

For further information regarding the hearings you may wish to contact Steven Quarles, committee counsel, on extension 43349.

RURAL DEVELOPMENT OVERSIGHT

Mr. CLARK. Mr. President, I am pleased to announce that the Rural Development Subcommittee of the Committee on Agriculture, Nutrition, and Forestry is continuing its series of rural development oversight hearings. The first set of hearings is scheduled for June 16 and 22 in room 322, Russell Senate Office Building. The hearing will begin at 10 a.m. on both days.

During this first phase of our hearings the subcommittee will hear from the Assistant Secretary for Rural Development, Alex Mecure, accompanied by appropriate USDA staff. The 2 days of hearings will concentrate on the management problems of the Farmers Home Administration, further implementation of the Rural Development Act of 1972, the Assistant Secretary's opinions on how he views the new administration's commitment to the concept of rural development and, finally, any legislative initiatives either planned or proposed by the administration.

Later in the summer the subcommittee will continue its oversight work in the areas of rural energy problems.

ADDITIONAL STATEMENTS

THE CONTROVERSY OVER SEALED BIDS

Mr. CHURCH. Mr. President, in May, both the Agriculture Committee and the Energy and Natural Resources Committee held hearings on my legislation to end the controversy over the use of sealed bids on Forest Service timber sales in the Northwest.

At those hearings, several Senators wondered as to just how much economic disruption had been occuring since the Forest Service shifted from oral auction bidding to sealed bids. In addressing their questions, I cited several specific cases which indicated that national forest material was in fact being shipped over longer than usual distances under the new Forest Service formula. Those cases clearly demonstrate that traditional log-flow patterns are changing in the Northwest. Serious disruptions in the flow of materials to communities which are dependent upon national forest timber could bring about the shutdown of many local sawmills.

On June 1, the Bulletin in Bend, Oreg., carried an interesting story which describes how a Bend lumber company was outbid by a distant firm on a sale sold on the Deschutes National Forest under sealed bid methods.

This story indicates just how unstable the timber supply situation is in the Northwest under the new sealed bid system. For the information of my colleagues, I ask unanimous consent that the article be printed in the RECORD.

I also ask unanimous consent that an editorial from the Seattle Times, which deals with the same subject, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Bend (Oreg.) Bulletin, June 1, 1977]

BEND FIRM LOSES BIG TIMBER SALE

(By Steve Ray)

One of the largest timber sales scheduled this year on the Deschutes National Forest was purchased Tuesday by Louisiana Pacific Corp. of Prineville. It marked the first time a firm outside the greater Bend area had bid successfully on a large Deschutes sale.

The Prineville firm outbid Boise Cascade of Medford and Brooks-Scanlon of Bend in sealed bidding for 18.1 million board feet of timber on the Pine Flat sale. The volume to be harvested represents 10 per cent of the timber to be sold on the Deschutes forest this year.

Louisiana Pacific's high sealed bid was $3,362,360; Boise Cascade bid $3,168,509.52 and Brooks-Scanlon, $2,919,272.52.

Soon after Brooks-Scanlon President Michael P. Hollern learned that Louisiana Pacific had turned in a bid $443,000 greater than his company's, Hollern said, "The sale simply confirms what we've been saying since the Forest Service introduced sealed bidding.

"It offers a less-than-adequate means for a local mill to protect its tremendous investment in plant, equipment and people."

Hollern said the timber in the 1,742-acre Pine Flat Sale would have supplied the Brooks-Williamette sawmill in Redmond with enough logs to operate 19½ months.

Brooks-Williamette, Inc., is owned jointly by Brooks-Scanlon, a Bend based firm, and Willamette Industries, based in Portland. Brooks-Willamette has plants in Redmond and Bend, and the Redmond mill employs 60 persons. Brooks-Scanlon plans to take over the Redmond mill—probably within a week.

"This is the first time I can remember a Prineville firm winning a large sale (on the Deschutes)," said Barney Duberow, assistant timber staff officer for the national forest.

Wayne Knauf, timberlands director for Louisiana-Pacific in Portland, said the corporation decided to bid strongly for the sale because "we've been unable to secure a sealed bid sale in Prineville." Louisiana-Pacific has consistently been outbid for sealed bid sales on the Ochoco National Forest, he said.

"One of the problems with sealed bid sales is that local, established industry does not have the opportunity to meet the outside competition in oral auctions," Knauf said. He agreed that that is the situation Brooks-Scanlon now is in because of his corporation's high bid.

"That's regrettable that the situation has arisen," Knauf said. "That's the name of the game. We don't make the rules."

Knauf said Louisiana-Pacific will continue to seek timber sales on the Ochoco and Deschutes national forests.

Duberow said this is one of only two or three sales of similar size this year, of about 30 total timber sales.

"The historic pattern is that they (Brooks-Scanlon) bid until they get them (large timber sales on the Deschutes)," said Jerry Allen, assistant forest supervisor for resources. Allen said that, under sealed bidding, Brooks-Scanlon has less control of the outcome.

The outcome, as far as Brooks-Scanlon was concerned, was determined even before Louisiana-Pacific's bid was opened. The sealed bid of Boise Cascade Corp. of Medford already had been opened, and it too surpassed Brooks-Scanlon's.

Louisiana-Pacific's high bid of $3,362,360.52 was $874,000—or 35 per cent—greater than the minimum bid advertised in The Bulletin on April 30. The minimum advertised bid totaled $2,488,130.52, including $137.46 per thousand board feet for an estimated 18.1 million board feet of ponderosa pine and other live species.

Boise Cascade's bid totaled $3,168,509.52 and Brooks-Scanlon's added up to $2,919,272.52. Brooks-Scanlon bid $161.28 per thousand board feet of pondersoa pine. Louisiana Pacific bid $185.76 and Boise Cascade $175.05.

"We submitted a sealed bid that was $400,000 more than the advertised price for the timber," Hollern said. "Because of the inherent unfairness of sealed bidding, we were not allowed to exceed the bids of outside competitors as we have consistently done in the past through open, oral auction.

"As a result, 18 million board feet of Sisters (Ranger) District timber will be leaving the Bend-Redmond community." Hollern said each sawmill needs to plan its timber supply—from purchases and from its own lands—about two years in advance.

"You can't run out of logs today and then look for a sale to log," he said. It would be "premature to comment" on whether Brooks-Scanlon now will seek timber outside this area, he said.

The sale area lies between the Santiam and McKenzie Highways about six miles northwest of Sisters and south of Black Butte Ranch. The Forest Service land containing the Pine Flat Sale is broken up by sections of privately owned land, some of which belongs to Brooks-Resources, a Brooks-Scanlon subsidiary.

The timber was destined to be sold by sealed bid several days prior to advertisement, according to the method prescribed by the Forest Service.

Hollern said it was "bound to happen" that a local firm would be outbid for a large sale.

"There is no way a local mill can assure itself of the timber it needs to keep operating with these one-shot sealed bid sales," he said. "Sooner or later, the roulette principle of sealed bidding will come into play."

Allen said the Forest Service "doesn't have a position" on whether timber should be sold to local firms.

"It's just compliance with the law," he said. "That's what it boils down to."

Duberow said the contracts and the effects on the forest are "the same no matter who logs it." Sale advertisements are mailed to more than 100 firms, he said.

He said Brooks-Scanlon has had to bid a greater percentage over the minimum bid in some past sales in order to win the contracts.

[From the Seattle Times, May 26, 1977]

BIDDING ON TIMBER

A little-noted debate is under way in Congress that could have a direct and even devastating impact on Pacific Northwest loggers and sawmill owners.

It concerns sealed bids versus oral bids at federal timber auctions. The House Agriculture Committee wisely approved a bill the other day to allow a return to oral bidding in Western timber sales.

Oral bidding has been used almost exclusively in the West since World War II. But under the National Forest Management Act of 1976, the traditional practice was severely restricted.

During the end-of-session rush last year, Congress directed sealed bidding on almost all federal timber sales.

That obscure and seemingly insignificant provision stunned the timber industry in the West, where many companies depend on federal timber for 60 to 100 per cent of their supply.

The doubtful argument for the measure was that collusion and bid-rigging were said to be widespread in oral auctions.

Indeed, five Oregon lumber companies have been convicted of collusion and may be barred from future timber sales. But this was the first such conviction since the Justice Department began investigations in 1960.

The industry argues that the incidence of illegal collusion is minimal, and says this is why there have been only two indictments in 17 years.

Moreover, industry spokesmen argue that federal timber-sale receipts, now about $500 million a year, already represent far more than the appraised market value of the timber. This is of wide public concern, because county governments share in the gross receipts from federal timber sales, with the proceeds used for county roads and allocations to local schools.

The sealed-bid requirement is particularly

worrisome to small timber companies, which often have only a few years' supply of timber under contract.

"It would be very hard to put Boise-Cascade out of business, but our guys could really get butchered," said Joe McCracken of the Western Forest Industries Association, which represents 150 small timber operators in 12 Western states.

Congress should follow the House Agriculture Committee's lead, and permit a prompt return to oral bidding on federal timber in the West.

CUBAN RELATIONS OFFER LITTLE BENEFIT FOR UNITED STATES

Mr. DOLE. Mr. President, on Monday of this week, I submitted Senate Resolution 182, to express the sense of the Senate with regard to preconditions for normalizing relations with the Government of Cuba. The purpose of the resolution is to express the concern of Congress and the American people about ongoing efforts by the Carter administration to improve relations with Cuba, despite a number of outstanding problems that remain unresolved.

Several of my distinguished colleagues have asked to be listed as cosponsors of the resolution, including Senators JESSE HELMS, BARRY GOLDWATER, CLIFFORD HANSEN, S. I. HAYAKAWA, JAMES MCCLURE, TED STEVENS, MILTON YOUNG, WILLIAM SCOTT, CARL CURTIS, STROM THURMOND, and HARRISON SCHMITT.

Mr. President, as I review the controversies surrounding restoration of U.S. relations with Cuba, it seems to me that the principal arguments in favor of normalized relations derive from two basic assumptions: That the United States is somewhat "isolated" in its policy position toward Cuba, and that resumption of normal trade channels with Cuba would somehow benefit U.S. trade interests. I find both of these assumptions inaccurate and basically misconceived.

Furthermore, I have heard suggestions that concern about Cuban involvement in Africa is exaggerated, or that Castro's attitude about human rights is misunderstood. To my own dismay, I have found such suggestions completely undermined by Castro's own public admissions in recent weeks.

At this time, I want to elaborate on these points, and respond to those who still maintain that it is in our own best interests to resume normal ties with the Cuban Government.

A NATION SET APART

There are those who now say that the United States is taking an outdated and narrow-minded policy perspective toward Cuba. I have found, to the contrary, that the United States is hardly alone in this respect. In fact, more than 50 nations throughout the world do not have diplomatic relations with Cuba at this time. This is dramatic evidence of the prevalent distaste for Castro's Cuban regime. and an impressive fact in view of that government's 17-year existence.

I will attach at the end of my statement a list of those nations that do not currently have diplomatic relations with Cuba.

In addition, Mr. President, it should be noted that Castor's Cuban Government has been excluded from participation in the Organization of American States since 1962, and does not have membership in either the International Bank for Reconstruction and Development—World Bank—or the International Monetary Fund. I draw attention to this point only to demonstrate that Cuba cannot yet be considered a full-fledged participant in the community of respected nations, at least so long as Castro is at the helm.

CUBA—A POOR TRADE PARTNER

Several business groups have recently visited Cuba, and some have come back expressing optimism about potential Cuban markets for American products. Of course, the resumption of exports to Cuba would require the lifting of the 1962 U.S. trade embargo against Cuba. A few of my colleagues in the Senate have already suggested that the embargo be partially lifted to permit the sale of food and pharmaceutical items—presumably as an indication of "Good faith" on the part of the United States.

In fact, however, the prospects for significant trade with Cuba in the event that the embargo is lifted are not optimistic. Furthermore, Castro himself belittles congressional initiatives to partially lift that embargo. In an April interview with the French magazine Afrique-Asie, Castro observed that—

> At present, certain U.S. Senators propose a lifting of the blockade with regard to food and pharmaceutical products. Yet, that does not solve the problem. A partial lifting is not sufficient * * * for Cuba, the principal issue is the economic blockade. The question is not how to lift it partially.

There is no doubt in my mind that the resumption of normal trade relations with the United States is important to the Communist dictator. It is the precipitous plunge of world sugar prices which has been among the major factors pushing Castro to the point of expressing interest in improved relations with our Government. But Castro is obstinate, and is unwilling to budge an inch until we have completely and unilaterally lifted our trade restrictions against his government.

To those American businessmen who contemplate major new markets just 90 miles from our shores, I will pass on some rather sobering trade prospects formulated by the U.S. Department of Commerce. Cuba, because it has essentially a one-crop economy, has a very limited hard currency capability for purchasing products abroad. Commerce Department figures suggest that the maximum hard currency import capability of the Cuban Government over the next 2 to 3 years will amount to no more than roughly $800 million to $1 billion. The Department anticipates that, under the very best of conditions, brought about by a complete lifting of the U.S. embargo, Cuba could afford to import no more than $300 million worth of U.S. products at the most. In relation to our annual trade level of about $100 billion, the Cuban market prospects are relatively insignificant.

It is my understanding that there has been little interest expressed by Cuban officials in future purchases of U.S. wheat. At present, Cuba has been importing about 750,000 tons of Canadian wheat and flour annually on its Soviet account, and there is no reason to believe that they would abandon that source and turn to the United States for grain supplies.

At present, about 60 percent of Cuban trade is with other Communist countries, and Cuba currently owes the Soviet Union about $5 billion. This is in addition to a Cuban hard currency debt to non-Communist countries estimated at $1.3 billion by the Central Intelligence Agency. It is clear the Cuban economy is hard-pressed, and I would have to say that the Castro regime would make a poor trading partner at this time.

CASTRO CONFIRMS OUR CONCERN

My resolution 182 reflects concern that Cuban Premier Fidel Castro has grand revolutionary designs upon the African continent, reflected in the presence of some 15,000 Cuban troops in various African countries. To my dismay, I have found these concerns essentially confirmed by Castro's own remarks during several recent interviews.

In an interview with ABC television which was broadcast last night, the Cuban dictator disclosed that he stopped withdrawing Cuban troops from Angola last April, despite his promise in June 1976 that the 20,000 Cuban troops stationed there would be withdrawn at the rate of 200 a week. State Department officials now estimate that between 10,000 and 15,000 of those troops have never been withdrawn and remain on active duty in Angola.

In an April interview with the French magazine Afrique-Asie, Castro candidly suggested that "The possibilities of a fundamental revolution are very substantial on the African Continent," and stated that "As far as southern Africa is concerned, I do not believe that peaceful and diplomatic solutions will persuade the racists and their allies to give up their regime." It is clear that Castro envisions a bloodbath throughout Africa, and intends to lend encouragement in that direction.

With respect to human rights—which the President has made a hallmark of his policy toward some Latin American governments—Castro seems to have no understanding of the term. Credible reports from knowledgeable sources indicate that as many as 15,000 Cuban political prisoners, or more, may be held in Castro's jails. For one who declares that Russia "is the freest of all countries," it is natural to comment "why do I have to tolerate the allies of my adversaries? If you want to tolerate them, OK, but not we." This, in fact, was his response to the interviewer's question about the imprisonment of Cuban political dissidents.

"NORMALIZATION" OF LITTLE BENEFIT TO THE UNITED STATES

On balance, there is little practical reason, from a political or economic standpoint, for the United States to feel compelled to resume ties with the Cuban Government at this point. Indeed, from both a moral and political standpoint, there are many reasons why we should not resume normal relations at this time. As I have said many times before, it is foolish for us to give up what "bargaining chips" we have for encouraging ob-

servance of human rights in Cuba, and for compelling the withdrawal of Cuban troops from Africa. If there is to be any principle in American foreign policy, and any rational pattern in our international behavior, then this administration must draw a line on any further concessions toward Cuba until we have seen some tangible progress by the Cuban regime toward resolving outstanding issues between our two countries.

I sincerely hope that Congress is able to communicate a message to the White House that will be fully heeded, with respect to future U.S. policy toward Cuba. My resolution intends to convey such a message, and I hope my colleagues in the Senate will support it heartily.

Mr. President, I ask unanimous consent that there be printed a list of those nations which do not currently have diplomatic relations with the Government of Cuba, and selected excerpts from two recent interviews with Fidel Castro.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONS THAT DO NOT HAVE DIPLOMATIC RELATIONS WITH CUBA

Africa: Botswana, Central African Republic, Comoro Islands, Gambia, Ivory Coast, Kenya, Lesotho, Malawi, Rwanda, Seychelles, Republic of South Africa, Sudan, Swaziland, Togo, Zaire, Tunisia.

Asia: Afghanistan, Bhutan, Burma, China (Taiwan), Fiji, Korea (South), Maldives, Nauru, New Zealand, Papua New Guinea, Singapore, Tonga, Western Samoa.

Europe: Andorra, Ireland, Liechtenstein, Monaco, San Marion.

Latin America: Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Paraguay, Uruguay.

Middle East: Bahrain, Israel, Jordan, Oman, Qatar, Saudi Arabia, People's Democratic Republic of Yemen.

EXCERPTS FROM BARBARA WALTERS (ABC TELEVISION) INTERVIEW WITH FIDEL CASTRO ON MAY 19, 1977—AIRED JUNE 10, 1977

(On reestablishing relations)

WALTERS. Mr. President, when will your country and my country have normal relations?

CASTRO. I believe that that depends on the good will of both parts. And I believe that it also depends on time. I don't even think they could be reestablished during Carter's term. Maybe in Carter's second term, between 1980 and 1984.

(On divided families)

WALTERS. Will you allow Cubans to visit this country, to visit their families?

CASTRO. I don't think that at this moment we have the conditions for that.

(On trade and foreign policy)

WALTERS. If you and the U.S. have relations, trade relations, economic relations, what about the future when we are on different sides, politically and in foreign policy? Would normal relations affect some of your foreign policy decisions?

CASTRO. Our ideas, we would never sell them for any type of money nor for any type of material interest. But historical experience shows, even our own experience shows that once economic bonds are established between two countries . . . these economic bonds . . . they do exercise a certain influence in the government's attitudes.

(On political prisoners)

WALTERS. Do you still have many political prisoners?

CASTRO. . . . a little more than a thousand. Maybe two or three thousand.

(On the Soviet Union)

WALTERS. Do you think Russia is a free country?

CASTRO. I think it is the freest of all countries.

(On dissidents)

WALTERS. If Russia is so secure, if its system is so good, why can it not tolerate . . . dissidents?

CASTRO. Why do I have to tolerate the allies of my adversaries? If you want to tolerate them, okay, but not we.

(On China)

WALTERS. Do you consider China a friend or an enemy of Cuba?

CASTRO. I consider China as a good ally of the United States.

WALTERS. Does that make her an enemy of Cuba?

CASTRO. To the extent that the U.S. is our enemy.

EXCERPTS FROM "AFRIQUE-ASIE" INTERVIEW WITH FIDEL CASTRO DURING APRIL 1977—PUBLISHED MAY 1977

CASTRO. Any aggression against Angola will be energetically repulsed. Any attack against Angola will be regarded by us as an attack directed against Cuba. Let there be no mistake about it: Fighting side by side with the Angolan people, we will defend Angola with all means at our disposal.

We will stay in Angola as long as we have to in accordance with the sovereign government of that sister nation, and contribute to the defense of this country and to the consolidation of its independence and oppose any threat of aggression regardless from where it may come.

Africa today is the weakest link in the imperialist system. In Africa, the biggest crimes against peoples were carried out not so long ago. Africa offers excellent perspectives for members of tribalism to move almost directly to socialism without having to pass through the diverse stages through which other regions of the world had to go through. If we call ourselves revolutionary fighters, we have the duty to support the anti-imperialist, the antiracist and anticolonial struggle. Africa today plays an extremely important role. Imperialist domination there is not as strong as in Latin America. Therefore, the possibilities of a fundamental revolution are very substantial on the African continent. * * *

"As far as southern Africa is concerned, I do not believe that peaceful and diplomatic solutions will persuade the racists and their allies to give up their regime. "Unity among the revolutionaries is one of the essential conditions for their victory and the objective designed to prevent a neocolonial solution from being foisted upon those countries." * * *

I want to make this very clear (he said in forceful voice). Everybody shall know that we will never negotiate our solidarity with Angola with the U.S. This is not a negotiable matter. Would it not be absurd if we, for example, were to discuss the withdrawal of U.S. troops from Europe, Iran, South Korea, the Philippines, Japan and Saudi Arabia? No, it is really absurd that the U.S. make such conditions. Our position is clear and without ambiguities. * * *

We have to see how the Carter policy will turn out in practice. We have to give it close attention. What I want to state more precisely is that Carter before the presidential elections adopted more explicit positions than Ford and that he was a little more critical of the conduct of certain international problems. Let us therefore wait and see how he will act in the future.

For Cuba, the principal issue is the economic blockade carried out against it. The question is not how to lift it partially, in order to create a more favorable climate for the improvement of our relations with the United States, this very discrediting and unbearable blockade must be lifted. * * *

We believe that the condition for the resumption of discussions is the lifting of the economic blockade. From our point of view, this is a very fair position; otherwise, we would not make any headway. We admit we are willing to make contacts for the purpose of clarifying this position; contacts, but no discussions.

BEING RIPPED OFF? CALL A KID

Mr. HUMPHREY. Mr. President, in my home State of Minnesota, young people are actively involved in the real-life problem of resolving consumer complaints of citizens in the Twin City area.

Consumer Action Service is a project of the St. Paul Open School's "Protect Your Rights and Money" class. St. Paul Open School is a public school for approximately 500 students, ages 5–18.

Mr. President, I ask unanimous consent that the text of an article written by Karen Branan and Joe Nathan which appeared in the March 1977 issue of Learning be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BEING RIPPED OFF? CALL A KID

(By Karen Branan and Joe Nathan)

Question: What stalks down missing radios . . . eliminates bad odors . . . takes landlords to court . . . receives ire and acclaim from public officials . . . teaches readin', 'ritin' and 'rithmetic . . . makes dozens of kids feel like a million while making adults reassess some of their blinkered ideas about adolescents?

Answer: Consumer Action Service, a project of the Protect Your Rights and Money class at the St. Paul Open School, which is an alternative public school with 500 students ranging in age from 5 to 18. The 11- to 17-year-olds who run the show laughingly refer to themselves as "Nathan's Raiders." Joe Nathan is their teacher.

The whole thing started six years ago when a group of St. Paul Open School students, who were studying ecology with Nathan, began to notice "a stinky stench" in their heavily industrialized school neighborhood. They traced the smells to four sources: a paper plant and three food processing and packing plants. An investigation and action project ensued.

Students talked with people at the Minnesota Public Interest Research Group. Spent hours at the Environmental Library studying odor pollution standards for every state. Consulted lawyers. Called for plant inspections by the city's Pollution Control Agency. Worked with that agency to write official complaints. Petitioned residents and other businesses affected by the odors. Testified from company and public officials. Persisted, at a public PCA hearing. Got the runaround persisted, persisted.

The PCA found the plants in violation of pollution ordinances and ordered schedules of compliance from each of the plants.

This project planted the seeds of the Consumer Action Service. Nathan believed that the youthful idealism, enthusiasm and intensity displayed in the pollution project could be directed toward solving a variety of relatively small problems that Twin City consumers encountered. At the same time, students would develop important skills in such diverse areas as writing business letters, using telephones and telephone directories, dealing with government and business organizations, and knowing their own rights and responsibilities.

Thriving in its second year, Consumer Action Service (CAS) deals in diversity: Dobermans and rental deposits, automobiles and insurance, shampooers and busted water pipes. The group (30 children currently are in the class) has worked on more than 50 cases and boasts a successful resolution rate of over 75 percent.

Students have used several methods to get the word out. Early in the project, three of the class members designed and wrote a one-page leaflet explaining CAS. The leaflet described some of the project's successes, listed groups the students worked with (Better Business Bureau, Minnesota Consumer Protection Agency, and others) and stated several cautions: "We are not attorneys. We can offer no guarantee of success. We must confine ourselves to consumer problems with Twin City area businesses or governmental agencies." Several hundred of these brochures were printed and distributed by the students in libraries, stores, and neighborhoods.

The Twin Cities news media helped spread the word about CAS. A radio and a television station and all four of the main newspapers have done stories about the group. Students also have written short articles for neighborhood newspapers. In addition to spreading awareness, students have improved their writing.

Recently the students opened a booth in the downtown St. Paul skyway system, which is made up of overhead walkways that connect buildings. The space was donated by a bank. Two or three students staff the table from 11:30 to 1:00 Monday through Friday. They hand out leaflets, answer questions and accept consumer complaints. The students don't attempt to give on-the-spot advice, but they do promise to bring the problems back to class.

THE CLASS IN SESSION

Nathan announces the agenda: review cases, talk strategy, give out new books, discuss a new case and hear from Richard Nadler, a lawyer who assists the class occasionally, about contracts and warranties.

Julie reviews the case of a local woman who is having trouble with an insurance company located in Wisconsin: "Ms. Brady's husband had a policy on their two daughters. Ms. Brady has been paying premiums since Mr. Brady died in '71. She found out the policy has a clause stating that if her husband died, the policy would be paid up. She and her insurance agent have been trying to get her money back from the company, but company officials refuse to pay. They say it's too late to do anything. She wrote us for help. We sent a letter to the company and one to the state insurance commissioner in Minnesota, asking about the deadline for filing a claim. He says it's five years."

TOM. "What happens if the claim is filed before time runs out?"

STEVE. "You'd think there'd be a better chance of getting the money."

NATHAN. "I'm concerned about the commissioner's opinion. Where can we get another opinion we can trust?"

STUDENTS. "Who can you trust nowadays? Especially in insurance."

"The laws could be different in Wisconsin."

"Call the insurance commissioner there."

"Do we have any money for a long-distance call?"

"No."

"Try calling collect."

NATHAN. "What's the issue?"

"Whether the five-year statute of limitation applies in this case."

"You see," says Nathan, "the point I'm making is that if the commissioner is wrong. Ms. Brady could be out $200."

Nadler, the lawyer, suggests they reread the policy to find out just what the agreement was and whether the statute of limitations was shortened or lengthened. "Go to a law library to find out what the Wisconsin law is," he says. He tells the class where the law libraries are, which are the best, and what to do when they get there.

The students discuss which action to take next and, finally, they vote. Going to a nearby law library wins.

NATHAN. "Who will go to the law library? Julie and Tamar? OK, and you'll report back on Thursday? Fine."

(The library was visited after school; a report was made to the class; students decided to write again to the Minnesota insurance commissioner for help in convincing the company to refund the money; the letter was written and mailed. Two weeks later, the class received a letter from the insurance company saying it would refund the money "although it is not required of us. . . .")

Nadler now hands out copies of the Uniform Commercial Code section that defines different types of warranties. The students go over the definition of a contract, something they've done dozens of times. Jeff, Eric and Mike give definitions of warranty of title, express warranty, and the three kinds of express warranties with examples.

MIKE. "If I go to Sears and see a blue 5-speed bike and say I want one like that and they send me a red 2-speed, I've got a breach of warranty by sample." More examples are given and the class moves on to a new case.

NATHAN. "This one just came in today. Mrs. Plymouth heard about us from a newspaper article. Her letter says, 'Dear Students: My family has been unable to get the radio an automobile company promised to put in the new van we bought from them. It was to be in when we picked the van up four months ago, but the salesman said they were out of radios and would send one within three weeks. We've called and called, but no radio. Perhaps you can help us.' Well, what's our goal here?"

KENNY. "Get her that radio!"

NATHAN. "Any disagreement? No? OK, what's our first step?"

"Call the car dealership."

"Call Better Business Bureau."

"Call Consumer Protection Agency."

"Write Mrs. Plymouth and see if she has a contract including the radio."

Nathan writes each suggestion on the board. Students speak for and against the various proposals. Kenny's argument in favor of writing Mrs. Plymouth wins: "We shouldn't call anyone until we know she can prove the dealer owes her a radio." Lisa and Kyle agree to write the letter.

Following this discussion, Nathan hands out copies of the book *Landlord and Tenant*. "Read to page 29 by Thursday," he says and dismisses the class.

CAS TO THE RESCUE

Mrs Plymouth did respond to the students' letter. She sent them a copy of her contract and added the comment, "Thanks for your prompt reply." After receiving Mrs. Plymouth's letter, the students voted to call the owner of the dealership. (A local newspaper writer who visited the class suggested starting at the top with a complaint, and students have found this to be good advice.) Before making the phone call, the students role-play a hypothetical situation, with Jim agreeing to be the owner's secretary and Kenny making the call.

KENNY. "Ring! Ring!"

JIM. "XYZ Cars. May we help you?"

KENNY. "This is Kenny Johnson from Consumer Action Service. May I talk with the owner please?"

JIM. "May I ask what this is about?"

KENNY, patiently. "Well, I'm from the Consumer Action Service and I'd like to discuss a consumer complaint about your company."

JIM. "Hold on please . . . I'm sorry, but Mr. X is busy now. Can I have him call you?"

KENNY. "No thank you. I'll call back. When would be a good time?"

JIM. "Well, are you sure someone else couldn't help you?"

KENNY. "No. I feel he'll want to know about this complaint. When would be convenient for me to call back?"

JIM. "Hmmm. Well, perhaps in about half an hour."

Kenny has developed into one of the group's best phone callers. The kids sometimes interrupt the role play with laughter or suggestions, and that's accepted, within limits.

The real phone call was even easier than the role play. Kenny got right to the owner, who said he'd check on the problem and call Kenny back in an hour. Kenny explained that he would be in class but that he'd call back. The owner agreed. Kenny called back and the owner promised to contact the Plymouths that day. Kenny asked if he could check back in a week. He reported all this to the class, which recommended writing Mrs. Plymouth to tell her about the conversation and to ask her to keep the class informed of any results. Five days later, a letter from Mrs. Plymouth arrived: "Thank you so much for your help. We drove in Friday after Mr. X called us. They put in a new radio, even better than what they'd promised. We're very pleased and really appreciate your help." Mrs. Plymouth received her radio within three weeks of contacting the class. The kids were elated.

In another class session, some more good news is announced: Ms. Gomez just received $430 from the St. Paul Housing and Redevelopment Authority (HRA). This was, according to Lisa, "a really huge case." Ms. Gomez, the mother of an Open School student, told her son's adviser at the Open School about a problem she was having after many of her family's belongings were damaged when a water pipe burst in her apartment in a federally subsidized housing project. Ms. Gomez had asked the project manager for reimbursement and had been turned down. The class took on the case.

Students helped Ms. Gomez estimate her losses, which came to more than $1,000. They discussed the case thoroughly and decided to call HRA. As a result of this call, HRA contacted Ms. Gomez and asked her to submit her estimate of losses. Weeks went by with no word from the agency. The class discussed the case with a guest speaker from the Minneapolis *Star*'s Column 1. (The *Star* is one of the two major afternoon newspapers in the Twin Cities; Column 1 is its consumer action service.) The speaker suggested that they contact the mayor's office. They did and were referred to someone who told them to talk with HRA commissioners or legal aid.

Students checked back with Ms. Gomez to find out if any action had been taken. None had, but a week later she learned her claim had been denied. She had also been unsuccessful in setting up a meeting with legal aid. When she asked the students for help, they discovered that while her Spanish was excellent, her English wasn't too good, and a legal aid secretary hadn't understood Ms. Gomez. With the students' help, an appointment was arranged.

Accompanying Ms. Gomez, the students talked with a legal aid law student about the possibilities of a court case. He said it would take several months. Ms. Gomez wanted the process speeded up because much needed winter clothing had been lost in the accident. With the law student's OK, the class decided to call the HRA legal department to find out exactly why the claim had been rejected. After several persistent attempts over a period of weeks, they got answers. But students discussed HRA's reasons and decided that HRA had made its decision without obtaining proper information from Ms.

Gomez. They checked out HRA's appeal procedure and were told it was too late to appeal and that Ms. Gomez should have known the appeal procedure because it was given to her when she moved into the apartment.

The students then called the HRA director and, receiving no reply, turned to a city councilman to find out if they and Ms. Gomez could plead the case before the HRA. He told them they could.

They painstakingly followed the procedure for getting on the agenda and verified beforehand that they were on it. When they arrived at the meeting with witnesses, however, they were told they had not followed proper procedure and could only address the commission through a commission member. They did this, and more than three months later, Ms. Gomez received partial compensation for her losses.

TIME TO ANALYZE AND CRITICIZE

Several days after the resolution of the Gomez case is announced, the students talk about what they have learned from the project and changes they want to make.

ELLEN. "It's important to be a help to the community, to actually serve people who need the help."

ANDREA. "I'm learning the different ways people are cheated and ways to protect myself."

LISA. "Now I keep my sales slips, records and contracts in a folder."

SUE. "I feel like, as kids, if we can help people with problems, we have better feelings about our authority. I feel important."

DAVID. "I've learned how laws and courts can be used to help me and my friends."

Nathan asks the student: "What are some things you don't like about the class?"

"We need more space in this room."

"We need to let more people know about us. Get more cases."

"Too much organization comes from you."

"We should keep an up-to-date list of all the people we deal with and write down comments on how they helped, so we know who to go to in the future. I think when people are working on a case they should write about it in detail."

"We need to spend more time discussing the cases we have rather than looking for lots more. Spend more time getting better. Talk about the mistakes we made and how to correct them."

A few decisions are made: People working on cases will write descriptions of them. A file will be kept on each case. A list of contacts will be kept. Nathan will try to get permission to move the 30-member class from this room, which seats only 15 comfortably, to a larger one. An article on CAS is coming out in a newspaper the next day, so the students decide to wait and see how many new cases coming from that before considering whether to look for new cases. Everyone agrees that students should work on problems in groups of two or three. Ellen suggests: "I think we're going too fast. We need to stop and think and talk about what we're doing. A case is more than just helping somebody get their money or whatever. It's learning how to analyze, understanding the larger meanings, being aware of the process."

Other students agree. Within a week, each of the suggested changes is in effect: a larger room, summary sheets and a file for each case, and a list of contacts with comments on their effectiveness.

THE WHY AND HOW OF A CONSUMER ACTION SERVICE

Nathan believes it is vital for kids to see why an ability to read, write and compute is so important. "It no longer works just to say these things are important," Nathan explains. "Kids have to see it. Working on the insurance case, they saw how misreading the policy resulted in major problems for Ms. Brady. And Ms. Gomez thought she lost $200. When she added it up carefully, however, it came to more than $1,000."

Students in CAS are confronted with some very complex situations: How well do most of us understand our insurance policies? How does it feel to confront the owner of a big company or a public official? Isn't it frustrating to make a call and then be referred to three or four different people? These kids are learning to deal with those situations.

A consumer action service doesn't require anything you don't already have or can't get easily. The basic equipment is a telephone and consumer problems, plus information on consumer rights and responsibilities. Here are some specific suggestions on setting up a consumer action service in your class:

1. Think about your role as a teacher. Nathan sees himself as an organizer, stimulator and encourager. He provides the framework students use in working on each problem, and he's pulled together a curriculum that helps students learn their rights and responsibilities as juveniles and consumers, and become knowledgeable about agencies available to assist consumers. The curriculum includes readings, guest speakers and field trips, as well as work on cases. It's not an organized, day-by-day guide, because Nathan varies some of the activities with the different cases. The students have written a 20-page booklet describing how they work on cases, listing the curriculum resources they've used and their evaluation of those resources, analyzing seven or eight of their most interesting cases, and offering suggestions to others.

Nathan encourages students with various skills to work together so they can teach one another. He has a list of skills each student in the class should develop, and he tests the students periodically to see how they're doing.

If students have an idea that makes sense, Nathan will try it out. One student's idea about keeping files on each case has worked out very well. Another student suggested (during the second year of the class) that a local "quick printer" might donate the printing for several thousand CAS fliers. Despite personal skepticism, Nathan urged the student to pursue her idea. The printer was happy to donate the printing of 3,000 fliers—$90 worth of work!

2. Before looking for cases, the teacher should develop students' interest in the subject and encourage their belief that they can help people with consumer problems. Students can read or hear about the work other students have done. They can read or watch filmstrips or movies about consumer rights. They can simulate a small claims court by breaking into groups of three (one student being the plaintiff, a second the defendant, and a third the judge). Each group deals with a stated problem in its own way and then the whole class discusses the different decisions made.

3. Visit or bring in people from radio, television and newspaper consumer services, and from local and state consumer protection agencies and Better Business Bureaus. If possible, visit small claims courts. Try to arrange for students to spend a day with someone at the Better Business Bureau or Consumer Protection Agency, as St. Paul Open School students have done.

4. Students should put together a simple brochure stating what their service can and cannot do. Ask people with consumer problems to contact you by mail only; otherwise, your school's secretary may be bringing the class a case about overloaded telephones. Distribute the brochure to libraries, Laundromats, grocery stores. Once you've handled a few cases successfully, you can arrange for newspaper publicity or an appearance on a radio or television show.

You might also consider trying to set up a table at a nearby shopping center or mall, or in a large store. Shopping centers sometimes will donate space to a school group. This could be staffed by student volunteers on Saturdays, for example. The students could distribute the brochures and talk with people about their project. Have forms available for people with consumer problems to fill out.

5. Make a list of skills you want students to develop or to improve upon. Nathan's list contains more than 30 items, including being able to use a telephone directory, being able to write a concise business letter, understanding what's required in a contract, knowing the differences in funding, power and authority among various consumer service agencies, knowing how to read a lease, and so on. Nathan devotes time in class to development of all the skills on his list.

6. Work out a clear framework for problem solving. The Consumer Action Service follows these problem-solving steps: Determine the problem according to the complainant. Determine the problem as the class sees it. Determine the problem according to the people about whom the complaint is being made. If the three are different, review the differences with the complainant. List potential strategies. Discuss pros and cons of each. Decide on one. Call for volunteers. Discuss exactly how to do what is necessary, and work on and practice requisite skills. (Kids carry out the strategies, but Nathan checks all letters before they go out and listens in on the first few telephone calls a student makes until he's satisfied the student can handle it alone.) Listen to the follow-up report. Discuss how to proceed. Change goals or tactics, if necessary. (In most cases CAS has worked on, strategies have changed several times.) Discuss cases after they are resolved. What worked? What didn't?

7. Develop a good system of forms and filing that *students* can understand and use. CAS uses a simple form for each case, with complainant's name, address and telephone number; names of students working on the case; agencies or persons worked with; short description of the case; steps taken; end result; date started and date finished.

In CAS's files, along with many letters of appreciation from satisfied clients, is one from Sherry Chenoweth, director of the Minnesota Office of Consumer Services. She wrote: "Your program speaks for itself as a model of the best way to help young people discover that there are some hard knocks dealt to people out in the marketplace. Knowing this and developing skills with which to cope effectively are just as important as development of intellectual skills and preparation for the world of work."

THE CIVIL AFFAIRS ASSOCIATION

Mr. THURMOND. Mr. President, on May 13–15, the Civil Affairs Association held its 30th annual conference at the Mills Hyatt Hotel in Charleston, S.C.

The Civil Affairs Association is a national organization, composed of active and retired reservists and Regular Army personnel, dedicated to a strong national defense. The particular area of expertise in which these men and women specialize is civil-military relations. They are particularly concerned with the interface between U.S. military forces and the civilian populations in countries in which U.S. forces are committed. In wartime, civil affairs personnel perform the important mission of keeping the local civilian population out of the way of U.S. military forces. In peacetime, they devote their efforts to assisting local gov-

ernments to build or rebuild their economies, maintaining health, and preventing famine and chaos.

The principal speaker at the 30th annual conference of the Civil Affairs Association was Gen. Fred C. Weyand, who retired last September as Chief of Staff of the Army. General Weyand devoted 38 years of his life to most distinguished and outstanding service, including World War II, Korea, and Vietnam.

I ask unanimous consent that General Weyand's inspiring remarks be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

THERE IS A ROLE FOR CIVIL AFFAIRS

Colonel Hyman, Colonel Nobleman, Distinguished Guests, Ladies and Gentlemen: It's a privilege to share this evening with you, and Arline and I are thrilled by the honor you have accorded us. This is the first time that I have worn my uniform since I retired last fall. It is just like coming home and I can't think of a group of people to whom I'd rather come home to. I suppose that after 38 years of commissioned service the transition to civilian life should be expected to involve at least some culture shock.

Right after our retirement ceremony, Arline and I drove across country visiting friends. We spent two days at Fort Bliss and I had a chance to play golf with a couple of senior sergeants. Well, I know I was retired for sure when I went to pick up a two foot putt of the type I'd always assumed was a prerogative of the Chief of Staff and one of the sergeants said quietly, "Take your time!"

I remember not long before I retired seeing a cartoon in a publication that showed a just-retired sergeant peering out of the post gate—looking at the "outside" world with a very uneasy expression on his face and saying, in dismay, "There's nobody in charge out there!" Well, I now understand the sentiments of that sergeant!

Not long ago, I went out and bought a new suit to wear in civilian life. I thought it was pretty dashing until I got it home and asked Arline what she thought of it—and she said, "Well, all you've done is buy another uniform!" And it was only then that I realized that I had bought a green suit and pretty close to Army green at that! Which goes to prove that it is easy to take the soldier out of the Army but it is almost impossible to take the Army out of the soldier! I'm not sure whether old soldiers die or just fade away—but I do know that as long as they're on the scene they sure remain old soldiers.

I don't have any great message to bring to you tonight because by no stretch of the truth can I masquerade as a Civil Affairs professional. On the other hand, no one who has gone through three wars and 38 years of commissioned service can help but have formed some impressions of the role of Civil Affairs, of its utility or lack of it and especially of the extraordinary caliber of men and women who are the true professionals in that field.

In my case, my career has been studded with examples of the potential of Civil Affairs—sometimes developed—sometimes not—but always a necessity for victory.

My first combat in World War II was in Burma so I remember very clearly when early in the war General Stilwell and his little band of staff officers and soldiers escaped into India and announced to the world that "we have taken a helluva beating." The fact is that the U.S. Forces in Burma were outnumbered throughout the war and it was only the integration of our strength with that of our allies—the British on the one hand and the Burmese and Chinese on the other—that gave us the margin for victory. We ended up depending very heavily upon the Civil Affairs support of our allies for our ultimate success.

If anyone needed an example to convince them of the critical requirement for Civil Affairs professionals, he would have only to review our experience in Vietnam. There our troops were engaged in a country that had at least the framework of a democratic government, from the hamlet level up to the national level. The fighting often occurred within the populated areas—not because we chose or wanted it that way, but because the enemy hoped to escape detection and the effects of conventional firepower by mingling with the population. Thus, there had to be the closest kind of cooperation and combined action between the U.S. fighting forces, the allied forces and civilian Vietnamese government.

Our units, as did those of our allies—the Koreans, the Thais, the Filipinos, the Australians and the New Zealanders—took pride in their efforts to maximize the capabilities of the civilian population to insure that they were as secure as possible from armed attack and terrorism and at the same time that the unique talents of these people to keep the political, economic and sociological systems functioning were fully exploited.

My Lai was a dreadful episode in the annals of American fighting forces, but it was just that—an episode—an aberration from the norm. I can't remember visiting a single American or allied unit in the five years that I was in Vietnam—and that meant something over a thousand visits—wherein, the commander failed to comment with pride on the work that his unit was doing to assist and win the respect of the people through civic action projects. They had learned—if they did not already know it before they came to Vietnam—that we could not win that war without bringing to bear the full weight and capabilities of the civilian population. That meant that as a minimum their combat efforts had to be integrated with and supported by the civil efforts of the people. And yet this effort—extensive and well intentioned as it was—was not enough. The power of the people—in the political, economic, sociological and psychological sense—was never fully generated.

In 1968, Field Marshal Montgomery published a book titled, "The History of Warfare" and I was struck by his opening words: "War is not the concern of soldiers only. Throughout history civilian life has always been affected by warfare, and in modern times the higher direction of war has become the responsibility of politicians, who are themselves civilians, and not professional soldiers, sailors or airmen. In total war, industry and civilian energies are absorbed into the war effort." Later he points out that "Modern war is total war and over the centuries has become very complicated, embracing the life and activities of a nation to an ever increasing extent."

Marshal Montgomery was simply stating the facts of life—that is, that war, if it is going to be won, involved the combined civilian and military strength of the nation and—very important for us—of its allies.

Recognition at the highest levels of the Civil Affairs role is not something new but even students of Civil Affairs are sometimes surprised to learn that in World War II the top U.S.-British military agency—the Combined Chiefs of Staff—had a combined *Civil Affairs* committee and our own Joint Chiefs of Staff had a permanent Civil Affairs division as a key element of its full staff. When the capitulation of Italy seemed to be a real possibility after the Sicilian Campaign in mid-1943, the British submitted their recommended armistice terms to the U.S. Joint Chiefs of Staff who in turn referred them to their Civil Affairs Division which rejected the British recommendation because it did not provide for an unconditional surrender. The Civil Affairs Division recommended instead that the Italian government cease to exist and that it be superseded by an Allied military government with authority throughout Italy except over the Vatican City. Eager as they were, they at least were wise enough to recognize that civil affairs does not have some limitations, and taking over the leadership of Catholicism is one of them!

In the Army's official history of that period the comment is made that although the Combined Chiefs of Staff was a remarkably successful organization in formulating military strategy it could not in spite of its recognition of Civil Affairs draw up an Anglo-American political program. Later, foreseeing the possibility of a rapid Italian collapse, General Eisenhower asked the Combined Chiefs of Staff for 960 military government officers, a requirement that later on was to be doubled, then quadrupled and further multiplied as the need in Europe expanded and even then, with thousands of Civil Affairs officers and men working their tails off—there weren't enough.

In spite of the near miracles that were accomplished when the critical importance of the Civil Affairs function was widely accepted, there was more than a little stumbling and fumbling on our part.

General Abrams used to say that good judgment comes from experience and experience comes from bad judgment. Which is another way of saying that hopefully we learn from our mistakes and if we're smart we'll also learn from the mistakes of others. Yet, now as we review the bidding, it seems clearly evident that we have not taken the experience of the role and the importance of Civil Affairs to heart.

Every Army Chief of Staff is predictably strongly influenced by his personal experiences. Naturally, his philosophy reflects that experience. In my case, when I was Chief of Staff, I made three assumptions against which I measured the thrust and effectiveness of Army programs. They were simply: (1) expect the unexpected, (2) be ready, and (3) when we go we'll probably be outnumbered.

Measured against these assumptions, our Civil Affairs programs are inadequate.

People who profess to know exactly what the form of the next war will be are a dime a dozen in Washington. One frequently expressed view is that the war, if there is one, will be an attack by the Soviet Union in Western Europe and there are very strong pressures to structure our Army to deal with that contingency and nothing else. I don't agree with any of that because in my lifetime we have never accurately forecast the employment of American fighting forces, and we have never, and I repeat *never*, been prepared for the conflict that we actually became involved in—and that includes World War II, the Korean War, and the war in Vietnam. In our attempt during peacetime to precisely forecast the future and to tailor our forces accordingly, we end up unprepared for the situations that do in fact develop and our experience with Civil Affairs is a classic case in point.

In World War II, Civil Affairs was a major factor in the outcome but even then we fell short in mobilizing the full potential of the civilian population in Western Europe.

In Burma, we were outnumbered and as Vinegar Joe Stilwell said, "We got the hell kicked out of us." Later, in an effort that offset some of the disparity in numbers of combat troops we mobilized the capabilities of some of the Burmese natives under the direction of the Office of Strategic Services—but there was never a coordinated Civil Affairs program worthy of the name.

And looking back on General Eisenhower's request for 960 military government officers:

that turned out to be only a small fraction of the numbers that would eventually be needed in Europe. The same shortcomings were repeated in spades in Korea in 1950 and again in South Vietnam in 1964. And tonight, as I stand here, I am still not sure that we are yet responding to the obvious as stated by Marshal Montgomery: that modern war totally involves the civilian as well as the military—that war is more than battalions and divisions slugging it out—that it requires the mobilization of the economic, political, technical, and sociological capabilities of the civilian population and the focusing of those relatively enormous capabilities in such a way that they support and reinforce the combat effort—that is, they do if we expect to win.

I remember in recent years sitting in high level conferences involving our commitment to Civil Affairs and the dicission always followed a predictable pattern. First, someone would postulate that America would never again become involved in the occupation of another country and then the obvious conclusion: Why maintain a corps of Civil Affairs personnel in the Army? As simple as that! Now, how does that square with the experience we have had which is supposed to be the basis for good judgment. Not very well!

First of all, it reflects the conviction that the nature and location of U.S. involvement can be forecast accurately—a conviction that has never been realized in my 38 years as an Army officer. Next, it ignores two facts: First, that in any future conflict we likely will be outnumbered militarily; and, second, our success will be measured by our ability to mobilize and integrate the capabilities of the military and civil forces of our allies with those of our own. Finally, it ignores the fact that Civil Affairs is a profession that demands a breadth of knowledge and experience not usually found in normal pursuits in our society. Past experience should have taught us that Civil Affairs experts are made, not born.

We frequently hear the caution that we should not use Vietnam as an example for lessons learned and experiences—good and bad—that might be relevant to the development of new, more effective doctrine. And I agree that Vietnam was so unique in so many ways that we should use caution in generalizing about our experience there. Still the fact remains that we did make an enormous national effort there and we failed. Of course, we have failed to bring peace to Africa, and we have not been able to bring assured stability to the Mideast, and there have been other situations that we have not been able to influence as we'd have liked—but Vietnam was different because of the great amount of material and personnel that we poured into that country—and still we failed. So there have to be valuable lessons that we should—that we must—learn from Vietnam.

I believe that one of them is that the Communists make a telling point when they refer to their programs to extend Communist control as "people's liberation," or as the "people's revolution" or as the "popular front." One of the main reasons they were successful in Vietnam was because the Communist leadership and Communist system—not only in North Vietnam but elsewhere—in China, the Soviet Union, Cuba—have developed methods and techniques that enable them to integrate and focus their political, economic, sociological and military resources on specific objectives. In so doing, they also reap the incredibly powerful motivational strength that comes when a people feel that they are part of, and personally involved in, a "cause"—in a great national team effort designed, as they view it to further the progress of mankind.

Relative to us and the free world the Communists are much more cognizant of the decisive role that the civilian populace can play in any armed conflict. The dreadful part about that fact is that they have used their unique capability to mobilize human resources to achieve evil objectives—objectives that are the antithesis of our philosophy of the primacy of human dignity and individual freedoms over the state.

As for us, we have at worst ignored the decisive potential of Civil Affairs in our defense of the democratic system, and at best we have used our Civil Affairs resources with far less than optimum effectiveness. We have never been adequately prepared in the field of Civil Affairs. We have never accepted the fact that people—not equipment—win wars. In World War II, the French lost their army, their navy, and their air force. France was occupied by German military forces and yet the people continued their resistance and in the final outcome they were a significant element in bringing about the defeat of Hitler's Nazis. I have always held that one of the unique characteristics of our Army is that it equips men whereas the other military services man equipment—and for that reason Civil Affairs personnel and units have a special meaning for me—they epitomize the point that the Army is "people." As a matter of fact, a trained Civil Affairs officer is the most potent "force multiplier" the Army has.

In Vietnam—a "people's war"—we deployed over half a million troops and yet included only three Civil Affairs Companies (the 2d, the 29th and the 41st). They were consistently about 20% understrength because we were woefully short of trained Civil Affairs personnel. So, when people tell you that you can quickly respond to Civil Affairs requirements in an emergency by drawing the people from common civilian pursuits, the answer based on bitter experience is: "Don't you believe it!"

In the final analysis, we have been overly defensive in our development of the Civil Affairs mission for the Army. We read phrases such as, "Our effort is to insure that the civilian community is not overly hostile" or "Our mission is to prevent civilian interference with tactical and logical operations." The Civil Affairs mission must not be regarded as defensive. It is positive, offensively oriented action necessary to mobilize the civil population and to provide from the civil sector a force and a focus that will insure the success of our national objectives. Throughout most of the Vietnam war our government believed that we, in concert with our allies, could decisively defeat and eradicate the enemy's military forces. Then, having produced a sterile anti-communist environment in which democracy could flourish, we would turn the country over to Vietnamese political authority to establish a viable political and economic democracy. There may have been strategies that would have enabled us to win that war but that wasn't one of them!

I am heartened by the interest that the leadership of today's active Army is showing in the Civil affairs mission. Both Forces Command and the Training and Doctrine Command are moving to formalize and institutionalize the many interrelated functions that constitute Civil Affairs. For the most part, this heightened interest is in response to your prodding. There were undoubtedly others, but when I was Chief of Staff I saw and heard enough of and from Eli Nobleman and Larry Rohde to the point that I began to wonder if they were a part of my permanent staff. Every time there was a rumor of someone or some agency preparing to take a whack at Civil Affairs, the names of Colonel Nobleman and General Rohde would appear on my calendar.

In January, I visited Manila and at a reception I met Colonel George Marko, the Army Attache. He had been assigned there from the Department of the Army staff. I find that the approach of these young officers to a Chief of Staff differs considerably depending on whether the chief is on active duty or retired. In this instance Colonel Marko was no exception—he gave me both barrels! He said, "You know, I really used to get aggravated with you. I was an action officer involved with Civil Affairs and every time those fellows Nobleman and Rohde came to see you, I could count on a note coming down saying that the Chief of Staff wants an accounting of what's going on to strengthen 'Civil Affairs.'" And he said it was a helluva lot of work to keep coming up with something original that would get past all the people in between him and the Chief of Staff.

The fact is that too much of our effort has been devoted to coping with outside pressures trying to emasculate Civil Affairs. Why? Because too many people don't believe in it. Why don't they believe in it? Because they don't understand it. They don't understand its potential as a decisive force. They don't understand that it is an incredibly effective "force multiplier" and they don't understand that we can't win without it. And, sadly, no one has been able to make the case that would elevate Civil Affairs to the priority position in our overall military program that it merits.

So there you have it: There is no military force in the world as adept as the United States in integrating firepower and bringing it to bear on the enemy and yet until we learn how to integrate our economic, political and sociological resources and bring them to bear in support of our military objectives we can never be certain of victory, no matter how much material, blood and lives we expend.

As the leading proponent of Civil Affairs this association has a heavy responsibility to the Army and to the nation. I urge you to press on—to spread the word, and to maintain your stand against those who still insist on ignoring the lessons of history.

GEN. FRED C. WEYAND, FORMER CHIEF OF STAFF, U.S. ARMY

General Weyand was named Chief of Staff of the U.S. Army in October of 1974 and served in the Army's No. 1 position until his retirement in September of 1976.

Born in California in 1916, General Weyand was commissioned upon his graduation from the University of California in 1940 and entered on active duty a few months later. His World War II service was primarily in military intelligence, and in 1944 and 1945 he was assigned to various units in the China-Burma-India Theater.

During the Korean Conflict, General Weyand served with the 3rd Infantry Division. In the interim between the Korean and Vietnam wars, he was given a variety of assignments.

He commanded the 25th Infantry Division in Hawaii and South Vietnam from 1964 to 1967, when he assumed command of the II Field Force Vietnam. Returning briefly to the United States in 1968, he was Chief, Office of Reserve Components.

After two other key assignments, General Weyand returned to Vietnam in 1970, first as deputy command, U.S. Military Assistance Command Vietnam (USMACV) and finally as commander. When U.S. forces withdrew from Vietnam in 1973, he assumed command of the U.S. Army, Pacific. He concluded his career in the Pentagon as Vice Chief of Staff of the Army and then as Chief of Staff.

He and his wife, the former Arline Langhart, have three children. Their retirement home is in Hawaii.

30TH ANNUAL CIVIL AFFAIRS ASSOCIATION CONFERENCE

Schedule of Events

Friday, 13 May 1977:

1200–2100—Registration, Lobby.

1430–1600—Civil Affairs Association Board of Directors meeting, Lynch Room.

1830–2030—Reception (complimentary open bar and heavy hor d'oeuvres).

2030—Entertainment, "Radiant Vibrations"—University of South Carolina Musical Group.

Saturday, 14 May 1977:

0730–0830—Board of Directors' Breakfast, Planters Suite.

0800–1530—Registration, lobby.

0900–1030—Opening session, ballroom.

Call to Order, Col. Peter D. Hyman, President, CA Assn.; Commander, 360th CA Brigade.

Invocation, Chaplain (LTC) Adlai L. Lucas, 360th CA Brigade.

Presentation of Colors, The Citadel Color Guard.

Association Welcome, Col. Peter D. Hyman.

Welcome Address, the Honorable James B. Edwards, Governor of South Carolina.

Keynote Address, Maj. Gen. Marion C. Ross, Assistant Deputy Chief of Staff for Operations and Plans, DA.

Remarks, Maj. Gen. Henry Mohr, Chief of the Army Reserve.

Remarks, Maj. Gen. Robert C. Kingston, Commandant, U.S. Army Institute for Military Assistance.

1030–1045—Refreshment break, lobby.

1045–1230—Workshop session, "Roles for Civil Affairs", ballroom, moderator, Brig. Gen. William R. Berkman, Commanding General, 351st CA Command.

"The Role of CA in Mutual Support of Active Army Divisions," Col. Roger D. Broussall, 351st CA Command.

"The Role of CA in Missions in Echelons Above Corps," Col. C. E. Kervin, 351st CA Command.

"The Role of CA in Modern Battlefield Doctrine," Maj. Gerald Kelly, 353rd CA Command.

"The Role of CA in the Army Exercise," Maj. John Bass, 360th CA Brigade.

"The Role of CA in USAR Recruiting," Col. John V. Kavanagh, 352nd CA Command.

"The Role of CA in the Community," Lt. Col. Lawrence M. Bellman, 356th CA Brigade.

1230—Business session.

1300–1500—Luncheon, Hibernian Hall.

Introduction of distinguished guests, Col. Peter D. Hyman.

Remarks, Lt. Gen. Sam S. Walker, Deputy Commanding General, U.S. Army Forces Command.

CA Association Awards, CAA Vice Presidents.

Address, the Honorable Strom Thurmond, Senior U.S. Senator, South Carolina.

1800–1900—Reception, 1st floor—Hibernian Hall (complimentary bar).

1900–2100—Banquet, 2nd floor—Hibernian Hall.

Invocation, Chaplain (LTC) Adlai L. Lucas.

Introduction of Distinguished guests, Col. Peter D. Hyman.

Presentation of CA Association Annual Award, Col. Eli E. Nobleman, Chairman, Executive Committee, CA Association.

Address, Gen. Fred C. Weyand, Former Chief of Staff, United States Army.

2100–2400—Dance, 1st floor—Hibernian Hall, music by "The Company" (cash bar).

Sunday, 15 May 1977:

0800–0845—Continental breakfast, lobby.

09–1130—Conference—Commanders and Staff, Lynch/Heyward Rooms.

CIVIL AFFAIRS ASSOCIATION HISTORICAL HIGHLIGHTS

Over the years, members of the Civil Affairs Association, as well as other interested persons, have requested information concerning the locations of our Annual Conferences, the identity of the principal banquet speakers and the recipients of the association's highest honor, the Annual Award.

Although this information is presently being compiled, the Historian of the Association was unable to complete the task in time for the 30th Annual Conference. It is anticipated that the task will be completed by the end of the year and made available in the 1978 conference program. The information collected to date appears in summary from below.

The first Annual Conference was held in Washington, D.C. in 1948. Cities which were the sites of the Annual Conference on more than one occasion include Washington, Boston, Chicago, New York, Philadelphia and San Francisco. Other cities were Atlanta, Hartford, Pittsburgh, Kansas City, Augusta, Ga., Portland, San Antonio, Pensacola, and Newark, Del. Charleston, S.C., is the Conference site for 1977 and plans are set for Dallas in 1978.

Our first principal banquet speaker was Gen. Lucius D. Clay, Commander-in-Chief, European Command and Military Governor of Germany (U.S.). Thereafter, among our banquet speakers were Generals Lyman Lemnitzer and William C. Westmoreland, Army Chiefs of Staff; Senators Wayne Morse, Alexander Wiley and Henry M. Jackson; Secretaries of the Army Stephen Ailes and Howard Calloway; Under Secretary of the Army Hugh M. Milton, II; Deputy Under Secretaries Howard E. Haugerude and Henry L. T. Koren; Assistant Secretaries of the Army George H. Roderick and Carl S. Wallace; and Ambassador Clare Timberlake.

Army General Staff officers and Major Army Commanders have included William R. Peers, then Chief of Reserve Components and later Deputy Commanding General, Eighth U.S. Army; LTG Richard G. Stilwell, Army DCSOPS and later Commanding General, Eighth U.S. Army; Gen. Bernard W. Rogers, then Comanding General FORSCOM and presently Chief of Staff; Gen. John W. Vessey, Jr., then Army DCSOPS and presently Commanding General, Eighth U.S. Army; and our 1977 principal banquet speaker, Gen. Fred C. Weyand, former Army Chief of Staff.

Four types of awards are conferred by the Civil Affairs Association upon individuals deemed worthy. Distinguished Service Citations are presented to persons in and out of the Association for distinguished service on behalf of the national defense and the Association. Certificates of Appreciation are conferred primarily upon members of the Association who have rendered a type of service which is clearly outstanding, but of a lesser degree than that required for the Distinguished Service Citation. The Civil Affairs Association Special Award is reserved for individuals who, in the judgment of the Association, have rendered outstanding service to the armed forces and the nation, and is reserved for very special individuals who are not members of the association.

The Annual Award, which is the highest honor conferred by the Association, was first presented in 1950. It is reserved for individuals, either in or out of the Association, who have made exceptional contributions to Civil Affairs, the Army, and the national defense, and have, in addition, consistently demonstrated exceptional leadership qualities.

Despite its designation as the Annual Award, it is not necessarily presented each year, but is offered only when, in the judgment of the officers and directors of the Association, there is an individual worthy of this honor. Thus, although it was first offered 27 years ago, the 1977 award will be the 22nd award conferred.

The Association has followed two basic ground rules in considering otherwise qualified individuals for this award: first, the recipient must not be in the Active Army, and second, the recipient must be present to accept it. To date, the association has withdrawn the award on two occasions because the nominees had advised that they would not be present to accept it. They were Gen. Dwight D. Eisenhower and Gen. Douglas MacArthur.

During the past 27 years, there have been two exceptions to these ground rules. In the first instance, the Annual Award was presented to Maj Gen. William P. Marquat, who served as Chief of the Office of Civil Affairs from 1952 to 1955, had retired and suffered a heart attack which made his presence impossible. In the second instance, Maj. Gen. William J. Sutton, Chief of Army Reserve, received the Annual Award, despite the fact that he was still on active duty. General Sutton's contributions and leadership were so outstanding that an exception was made, based upon the fact that he was a reservist on extended active duty and was scheduled to retire shortly thereafter.

Listed below are the names of the Annual Award recipients:

1950—General Mark Clark.
1951—General Lucius D. Clay.
1952—Colonel Daniel C. Fahey, Jr.
1954—Brigadier General Frank J. McSherry.
1955—Major General John H. Hilldring.
1956—Major General William F. Marquat.
1957—Colonel Ralph R. Temple.
1958—Colonel Wendell W. Perham.
1959—Brigadier General Strom Thurmond.
1960—George H. Roderick, Assistant Secretary, Army.
1961—Colonel Damon Gunn.
1963—Colonel James Newman.
1965—Colonel Robert Slover.
1967—Colonel William R. Swarm.
1970—Major General William J. Sutton.
1971—Colonel Eli E. Nobleman.
1972—Brigadier General Lawrence B. Rohde.
1973—Major General Milton A. Pilcher.
1974—Colonel Kalman A. Oravetz.
1975—Anthony J. Auletta.
1976—Colonel Karl S. Landstrom.
1977—General Fred C. Weyand.

THE NEW SERIES OF SENATE BUDGET SCOREKEEPING REPORTS FOR FISCAL YEAR 1978

Mr. MUSKIE. Mr. President, the first Senate budget scorekeeping report for fiscal year 1978 was issued on June 6, and a copy is on each Senator's desk. The report will be issued weekly when the Senate is in session.

The new series of reports for fiscal year 1978 retains the same format used in the fiscal 1977 reports. I believe the major change in format made last year—in which tables for each Senate committee and appropriations subcommittee were made the central part of the report—has worked well to inform each committee and each Senator of the relationship between the budget resolution targets and the individual tax and spending bills that are considered by the Senate.

Between now and the end of fiscal year 1977 on September 30 of this year, the new series of reports will contain a summary section on the status of the fiscal 1977 budget. Since most spending actions for fiscal 1977 are now complete, I believe the summary information will be sufficient for scorekeeping purposes.

The Budget Committee has speeded up the schedule for introducing this new series of reports, as compared to last year, so that the Senate will have the information it needs on budget status as it begins to consider the major fiscal 1978 appropriation bills later this month. I believe this information is essential, Mr.

President, for us to compare these and other spendings bills to the first budget resolution targets the Congress has set for itself in Senate Concurrent Resolution 19. The job of holding to the targets will not be easy. As this first report shows, the version of the Food and Agriculture Act recently passed by the Senate, if it prevails in conference would cause the budget targets to be exceeded and the deficit to be increased. We will, of course, have a much better idea of where the budget stands once the major appropriation bills are reported.

The staff of the Budget Committee will be happy to assist anyone who has questions regarding the report and to receive suggestions for further improvement in its contents.

CONCERNS OF THE ARIZONA NATIONAL GUARD

Mr. GOLDWATER. Mr. President, needless to say, the National Guard is a very integral part of our Nation's defense. I feel that we all too often take such institutions entirely for granted, while the fact is our National Guardsmen have some very real concerns. Some of these were listed recently in a series of resolutions adopted by the National Guard Association of Arizona. I ask unanimous consent that these resolutions be printed in the RECORD.

There being no objection, the resolutions were ordered to be printed in the RECORD, as follows:

RESOLUTION RELATING TO EDUCATIONAL ASSISTANCE

Whereas, Legislation has been introduced in Congress to provide educational assistance to non-prior service personnel who are members of the National Guard and of the Selected Reserve of the Ready Reserve; and

Whereas, Educational assistance can serve as an incentive for participation in the National Guard, and improve the educational level of the National Guard, our States, and our Nation; and

Whereas, The National Guard Association of the United States, the Air Force Association, the Association of the U.S. Army, the Marine Corps Officers Reserve Association, the Navy League, the Naval Reserve Association, and the Reserve Officers Association strongly support legislation relating to educational assistance as a measure to aid in recruiting and retention of personnel in the National Guard; now

Therefore, Be it Resolved, by the National Guard Association of Arizona, in Annual General Conference Assembled this 30th day of April, 1977 at Tucson, Arizona, that this Association supports tuition assistance legislation and urges favorable consideration of this incentive by the Department of Defense and Congress; and

Be it Further Resolved, that the Board of Directors of this Association be and they hereby are authorized and directed to send a copy of this resolution to the members of the Congressional delegation from Arizona and the National Guard Association of the United States.

RESOLUTION RELATING TO BONUSES FOR RE-ENLISTMENTS

Whereas, Legislation has been introduced in Congress to provide enlistment bonuses for prior service personnel who are members of the National Guard and of the Selected Reserve of the Ready Reserve; and

Whereas, Re-enlistment bonuses can serve as an incentive for participation in the National Guard; and

Whereas, The National Guard Association of the United States, the Air Force Association, the Association of the U.S. Army, the Marine Corps Officers Reserve Association, the Navy League, the Naval Reserve Association, and the Reserve Officers Association strongly support legislation relating to bonuses for re-enlistments as a measure to aid in recruiting and retention of personnel in the National Guard; now

Therefore, be it resolved, by the National Guard Association of Arizona, in Annual General Conference Assembled this 30th day of April, 1977 at Tucson, Arizona, that this Association supports bonus re-enlistment legislation and urges favorable consideration of this incentive by the Department of Defense and the Congress; and

Be it further resolved, that the Board of Directors of this Association be and they hereby are authorized and directed to send a copy of this Resolution to the members of the Congressional delegation from Arizona and the National Guard Association of the United States.

RESOLUTION RELATING TO PROVIDING SURVIVORS BENEFITS FOR DEPENDENTS OF PERSONS WHO PERFORM THE SERVICE REQUIRED UNDER CHAPTER 67, TITLE 10 U.S.C. AND DIE BEFORE BEING GRANTED RETIRED PAY

Whereas, Chapter 67, Title 10, United States Code, sets forth the retirement benefits available to members of the Retired Reserve; and

Whereas, Retirement benefits are usually computed in the total retirement program of the individual Retired Reservists; and

Whereas, The provisions of the U.S. Code require an individual Retired Reservist to attain age sixty (60) before receiving these benefits; and

Whereas, If a Retired Reservist dies prior to the attainment of his sixtieth birthday, no benefits will be paid to his dependents nor will they be eligible for such benefits at the time the deceased Reservist would have attained sixty (60); and

Whereas, Legislation has been introduced in the Congress of the United States that would correct this inequity by providing to survivors an equitable share of benefits already earned by Retired Reservists who decease prior to attainment of their sixtieth birthday; now

Therefore, be it resolved, by the National Guard Association of Arizona, in Annual General Conference Assembled this 30th day of April, 1977 at Tucson, Arizona, that this Association supports survivors benefits legislation and requests the Department of Defense and the Congress to support this worthwhile incentive; and

Be it further resolved, that the Board of Directors of this Association be and they hereby are authorized and directed to send a copy of this Resolution to the members of the Congressional delegation from Arizona and the National Guard Association of the United States.

RESOLUTION RELATING TO FEDERAL TORT CLAIMS ACT AND DRIVERS ACT COVERAGE OF NATIONAL GUARDSMEN

Whereas, Members of the United States Army, the United States Air Force, the United States Navy, and the Reserve components thereof are fully protected from liability for torts committed by them in line of duty, either in the active service of the United States, or in various duty postures during reserve training; and

Whereas, Such individuals are defined as Federal employees within the meaning of the Federal Tort Claims Act and other similar applicable statutes, and the costs of their defenses are underwritten by the United States and any financial responsibility flowing from litigation against them is borne by the United States; and

Whereas, Members of the Army National Guard of the United States and the Air National Guard of the United States are not presently Federal employees as defined in the Federal Tort Claims Act and related statutes while performing Federally-funded training or missions and thus have no protection except for such limited remedies as may be afforded by some statutes in some States; and

Whereas, Such disparity of protection is grossly unfair not only to the members of the Army and Air National Guard, but also to potential claimants from among the citizenry of this country; and

Whereas, Such inequitable treatment of the Army National Guard and the Air National Guard is a gross violation of the One Army and One Air Force concepts which are the avowed policy of the United States; and

Whereas, The ever-increasing litigiousness which prevails in this Country, and the concomitant increasing awareness of Guardsmen and potential Guardsmen of their possible exposure to such claims, is having an adverse effect upon recruiting and retention, as well as the performance of specific missions and training in which such exposure can arise; and

Whereas, The assumption of the burden of protecting members of the National Guard and citizens of the United States in matters arising as a result of the performance of Federally-oriented missions and training (excluding State active duty) is not within the fiscal capabilities or the moral responsibility of the various States of the Union; now

Therefore, be it resolved, by the National Guard Association of Arizona, in Annual General Conference Assembled this 30th day of April, 1977 at Tucson, Arizona, that this Association supports the Amendment of the laws of the United States of America to afford to the Army National Guard of the United States and the Air National Guard of the United States that same protection from liability for torts committed in the line of duty during the performance of Federal missions and training which is presently afforded to the regular Services and their Reserves, while at the same time affording to the citizens of the Country who suffer damage as a result of the performance of Federal missions and training by the National Guard of the United States the same compensation to which they are entitled when such damage is caused as a result of activities of the regular Services; and

Be it Further Resolved, That the Board of Directors of this Association be and they hereby are authorized and directed to send a copy of this Resolution to the members of the Congressional Delegation from Arizona and the National Guard Association of the United States.

RESOLUTION RELATING TO UNIONIZATION OF THE ARMED FORCES

Whereas, Labor organizations exist for the purpose of dealing with employers concerning grievances, labor disputes, wages, hours of employment and other conditions of work; and

Whereas, Effective command control, and discipline of the armed forces, including the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components in central and indispensable to the accomplishment of their military missions; and

Whereas, The command structure, the system of military justice, and many of the duties and responsibilities of members of the armed forces are unique, and cannot be equated with the conditions of employment of civilian employees of government or industry; and

Whereas, A number of labor organizations have signified an interest in enrolling members of the armed forces for the purpose of representing them in matters related to their military status and membership; and

Whereas, Legislation has been introduced in the Congress, to make it a criminal offense for any individual or entity to enroll a member of the armed forces, including the reserve components, in a labor organization, or for such a member to join such an organization unless the activity, purpose, or function of the organization is unrelated to membership in an armed force; and

Whereas, The enactment of such legislation would not impair the right of a National Guard technician employed under section 709 of Title 32, United States Code, to remain in, or to become a member of a labor organization whose activities are unrelated to membership in the armed forces, or the right to encourage or solicit others to become members of such organizations; now

Therefore, be it resolved, by the National Guard Association of Arizona, in Annual General Conference Assembled this 30th day of April, 1977 at Tucson, Arizona, that this Association strongly supports the enactment into law of legislation prohibiting Unionization of the Armed Forces; and

Be it further resolved, That the Board of Directors of this Association be and they hereby are authorized and directed to send a copy of this Resolution to the members of the Congressional Delegation from Arizona and the National Guard Association of the United States.

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

Mr. BAYH. Mr. President, on Monday, June 6, there appeared in the Washington Post an editorial endorsing legislation in the House that would give the U.S. Justice Department statutory authority to initiate lawsuits to redress deprivations of constitutional rights of persons confined in State institutions. S. 1393, my counterpart to that House bill, will be the subject of 4 days of hearings later this month before the Senate Subcommittee on the Constitution.

As the Post editorial accurately noted, an increasingly large body of evidence suggests that significant numbers of institutionalized individuals across the Nation are being subjected to systematic deprivations of fundamental rights secured by the Federal Constitution. The inability of institutionalized persons to recognize and to seek relief from many of the worst abuses, makes the assistance of the Federal Government imperative. This is the conclusion of the Attorney General, the American Bar Association, and numerous other organizations that have addressed the problems of institutionalized persons.

The Subcommittee on the Constitution hopes to illuminate some of these problems at the hearings to be held on S. 1393 on June 17, 22, 23, and 30. Mr. President, I ask unanimous consent that the Post editorial, "Federal Help for State Inmates," be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

FEDERAL HELP FOR STATE INMATES

The House Judiciary Committee has under study proposals to give the Department of Justice power to initiate legal actions to protect the rights of inmates in state institutions. The proposals are controversial and not free from constitutional doubt. The National Association of Attorneys General has denounced them as invasions of states' rights and promised to contest in court any that is enacted. But it seems to us that the need for legislation in this field is clear and that the legal basis for it is sufficiently strong for Congress to adopt one of these proposals.

The problem at which the legislation is aimed is the way inmates are treated in some state prisons, hospitals and mental facilities. The evidence compiled in a series of recent court cases has been staggering. In states as diverse as Alabama and New York, federal judges have ordered sweeping changes in the way institutions are run after finding substantial evidence that inmates were systematically abused and denied their constitutional rights. The mistreatment that was documented ranged from failing to protect convicts from physical assaults by other convicts to ignoring the medical needs of the mentally ill to simple malnutrition.

Most of these court cases were brought by individual inmates, and the Department of Justice was permitted or asked to intervene by the trial judge. But the experience gained in them convinced the Department that there are a number of other state-operated institutions in which maltreatment occurs but in which no inmate is able or dares to go into court. It filed two cases itself—one in Maryland over conditions at Rosewood state hospital and one in Montana—but both were dismissed on the ground that the executive branch of the federal government lacks authority to file such a case without a specific grant of power from Congress. The proposals now under consideration in the House Judiciary Committee would provide that authority. They have the support of the Carter administration and the American Bar Association.

The states, however, have been attacking the proposals as unconstitutional, unwarranted and unwise. The Association of Attorneys General argues that principles of federalism bar the federal government from interfering so deeply in matters entrusted to the states. And they contend that solutions to problems can be worked out better through cooperation than through law suits that put the problems in the bands of federal judges who are poorly equipped to tell state governments how to run particular institutions.

The trouble with these arguments is that too many states have shown a disinclination to clean up the messes in their own institutions until the federal courts have ordered them to do so. It would be much better to keep matters like this out of the courts, but the issue is not unlike that of reapportionment. History demonstrated that unless the courts began to require it, some states would never fulfill their constitutional obligations. We have seen precious little to suggest that the states will begin to treat all inmates the way the federal constitution requires unless they are pushed into it. And the best way for that pressure to be brought, it seems to us, is in a coordinated program run by the Department of Justice rather than in a long series of individual law suits filed by inmates who have been abused.

LOCKING THEM IN

Mr. McCLURE. Mr. President, the Louisville Courier Journal earlier this week carried an interesting article discussing S. 790 and the issue of waterway user charges. This article, entitled "Locking Them In: Barge Lines Believe Fees Inevitable for Users of Waterways," states fairly the issues the Senate will soon confront. To give my colleagues a further understanding of these points, I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

LOCKING THEM IN: BARGE LINES BELIEVE FEES INEVITABLE FOR USERS OF WATERWAYS

(By Ward Sinclair)

WASHINGTON.—As regular as clockwork, the Sam Dreyer and the Lyne Goedecke, two towboats, go chugging up and down the Kentucky River, pushing barges of sand that is vital to Kentucky.

In the course of their 80-mile runs between Milton, on the Ohio River, where they pick up sand, and Frankfort, on the Kentucky, where they unload it, they tow more than 500,000 tons a year.

The top-quality sand hauled inland to Frankfort by Dreyer and Goedecke Inc., owner of the tiny fleet, in turn accounts for 80 per cent of all the sand used in construction in central and southeastern Kentucky.

"Our business is based on service, and without those barges we just wouldn't survive," said Sam Dreyer, vice president of the firm, who has been selling sand with his partner, Lyne Goedecke, since 1931.

Dreyer and Goedecke are able to survive in part because they—like hundreds of other haulers of bulk commodities—receive a huge amount of help from the federal government.

The government clears river channels, mans and maintains locks and dams and lights navigation lights—all at no expense to the shippers.

No fees of any sort are charged. That's because since 1824 it has been a federal policy to build and maintain inland waterways all over the United States.

The inland waterways system has cost the federal Treasury an estimated $8 billion—half for construction, half for operation and maintenance.

And while some waterways, such as the Ohio and the Mississippi River, are Main Streets of activity, there are waterways such as the Kentucky River.

The federal government maintains 14 locks on the Kentucky and the only commercial user of the waterway is Dreyer and Goedecke.

"We don't like to take a belligerent attitude. Everybody wants to pay his fair share," Dreyer said recently. "But the government has helped other forms of transportation, and we feel that by helping water transportation, it keeps the other boys (railroads, trucks and airlines) in line."

Paying one's fair share to use the waterways is an idea whose time apparently has come. In Congress and inside the powerful barge industry, which is controlled by some of the country's corporate giants, the opinion is that a waterways user fee is inevitable.

The question is when and in what form. With President Carter and the Department of Transportation in support, Congress is closer this year than ever before to adopting a user fee of some kind.

The Senate Environment and Public Works Committee has approved a bill that directs the transportation department to come up with a user fee that would be imposed gradually.

The bill, proposed by Sen. Pete Domenici, R-N.M., calls for phasing in a charge over a 10-year period. Such a fee would eventually recover 100 per cent of annual operation and maintenance costs and 50 per cent of new construction costs.

And for the Sam Dreyers of the world, his proposal compels the transportation department to adopt no approach that would cause serious economic disruption to the commercial users of the waterways.

But the Committee on Commerce, Science and Transportation, which also has jurisdiction, disagrees with that approach. Instead, it has recommended that the transportation department study whether and what kind of system should be imposed so that Congress could then decide what to do.

A Senate vote is expected within weeks, going either with the Domenici approach, which could have a tax in place by Oct. 1, 1979, or with the more leisurely Commerce Committee approach.

House action is less certain. Hearings have not been held, and a champion of user fees has not emerged in that body.

Domenici, however, has worked the opponents of user fees and a host of Midwestern senators into a neat but intricate political box.

His user fee proposal includes building a new Locks and Dam 26 on the Mississippi River at Alton, Ill. The estimated cost of the facility is $421 million, but the project is expected to surpass $1 billion before it's done.

The towing industry and legislators from the Midwest have pushed feverishly for years to get the Alton project authorized as a means of eliminating what they say is a dreadful traffic bottleneck on the Mississippi.

As it works out, the industry is formed both to support part of Domenici's bill and oppose part of it. The price of a new Locks and Dam 26 is accepting user fees.

Adding to the pressure is Mr. Carter's recent statement that he would veto any legislation that authorizes a new Locks and Dam 26 but omits user fees.

The towing industry has recognized the threat of user fees as real. The chief trade association, the American Waterways Operators, has hired two of Washington's most politically potent law firms and a major public-relations outfit to plead it case.

The law firm of former Florida Sen. George Smathers and another firm, headed by former Republican White House aides William Timmons and Tom Korologos, are pushing for approval of the Locks and Dam 26 project.

And the Burson-Marsteller public-relations company, with former Nixon White House assistant Steve Bull calling the shots is trying to ward off user fees.

One of the firm's efforts—although Bull denied it is connected to the rise of the Domenici bill—will be a tour for newsmen next week in the valleys of the Ohio and Monongahela rivers. It is to show "the importance of the river transportation system to the industrial health of the nation," Bull said.

On the other side, railroads and environmentalists have lined up in an add-couple sort of coalition to push for user fees on the waterways and halt construction of new facilities at Alton. They propose a less expensive rehabilitation there.

Whatever the impact of a user fee, it will be felt in Kentucky, which has more miles of navigable streams than any other state except Alaska. Coal, agricultural commodities machinery, oil and chemicals move in huge quantities on Kentucky's waterways.

Ashland Oil Inc., the nation's 45th largest corporation, claims to own the country's largest liquid cargo river fleet. Texas Gas Transmission Co., based in Owensboro, with revenues of $900 million, owns American Commercial Barge Line, a major coal hauler with 52 towboats and 1,258 barges.

That situation has helped put Kentucky public officials on the side of continuing the status quo. Sens. Walter (Dee) Huddleston and Wendell Ford have said they view user fees as probably inevitable, but they want more study before anything is done.

Gov. Julian Carroll has come out in support of building a new Locks and Dam 26, while Commerce Secretary Terry McBrayer has urged the defeat of Domenici's bill.

The potential economic disruption they foresee is the basic argument given by the Kentuckians for opposing the charges.

The barge industry and the big users of barges—grain, petroleum, and chemical companies—have argued bitterly that imposing user fees would price low-cost water transportation out of competition with other modes.

Domenici counters every industry argument with one of his own. He refers to many of the arguments as "flights of fictitious fancy" that far overstate the economic impact of user fees.

When Martin Marietta officials argued that higher consumer costs would result if the 500,000 tons of sand and gravel they dredge from the Ohio River near Louisville were subject to a carrier fee, Domenici jumped.

"That may be true," he said. But he added that the cost resulting from a user fee as he envisions it would add no more than 2 cents per ton over a 10-year period.

NATIONAL ACADEMY OF SCIENCES' REPORT ON THE VA HEALTH CARE SYSTEM, ENTITLED "HEALTH CARE FOR AMERICAN VETERANS"

Mr. CRANSTON. Mr. President, the National Academy of Sciences will make public Sunday a report produced under a contract with the Veterans' Administration, which calls for major changes in the VA hospital and medical system. It is a thoughtful and serious report, and it should receive thoughtful and serious consideration by the Congress and the administration.

It is the most important report with regard to the VA medical system that has been issued since I came to the Senate in 1969.

Much that is said in the report has been said in other independent, but less comprehensive reports. What is new about the NAS study is the comprehensiveness of its scope and the detailed documentation of its findings that problems exist in the program.

On the other hand, the conclusions and recommendations reached in the report on the basis of its findings are not necessarily the only ones that follow, or need follow, from those findings.

I think in fairness it must be pointed out that, while the NAS' own press release regarding the report stresses the negative findings, there is much in the report that is positive in regard to the health care provided by the VA Department of Medicine and Surgery. Specifically, the report finds that the VA medical facilities are generally providing adequate care, that veterans are generally satisfied with the care they receive there, and that most veterans receiving care at the VA have no other source of comparable care.

So, the report in a very fundamental way finds that the VA medical system is performing competently a function very much needed by society.

As I indicated, Mr. President, most of the report's major findings have been reached in other reports and by other bodies previously. Congress itself has been extremely concerned about the VA's capacity to meet the needs of an increasing number of elderly patients requiring nursing home and other extended care. The Congress has required a blueprint from the VA to meet these needs by this fall, and has continually expanded the authority for and funding of VA extended-care facilities.

Numerous reports, including from the General Accounting Office, the Congressional Budget Office, the Office of Management and Budget, and congressional committees, have raised serious questions about the appropriate mix of VA beds as between acute and extended care.

The same can be said with respect to the contention that many VA special medical services, such as open-heart surgery and kidney dialysis and transplant programs, are seriously underutilized.

This report, by marshaling over a 3-year period evidence not before presented systematically or comprehensively, presents a great challenge to the Congress and to the administration. I urge that all with responsibility for the VA medical program, in and out of the Government, respond constructively to the challenge in this study.

Many veterans will be unalterably opposed to any phaseout of the VA medical system. I remain fully committed to the maintenance of a separate VA medical system that can guarantee quality care for disabled veterans.

But I believe that the report demonstrates that there are serious concerns which must be addressed in making decisions regarding future directions for the VA medical program. And I stress again that there are a number of ways to address these concerns, and certainly the best ways may well not be those recommended by the report. I believe that the great danger about the report and the press release is that it will not be objectively evaluated and will be used to support already preconceived notions.

On the other hand, Mr. President, if leaders in and out of Government in the area of veterans' affairs work together to evaluate fully and carefully the findings and recommendations in the report and to find new and creative solutions to many of the well-founded concerns and findings which I believe the report contains, the VA system will be strengthened, its integrity enhanced, and its responsiveness to meeting the needs of disabled veterans improved.

That is my goal, Mr. President.

But I firmly believe, and have believed for many years, that that goal can be achieved only by a VA health care system which is creative and adaptable to changing needs and changing times. Laws change, attitudes change, and social and economic facts of life change. No institution in our society can remain viable unless it is responsible to these factors.

The VA health care system cannot remain static in the fact of the dynamic changes confronting overall health care in the Nation at this time. I have stated privately and publicly for many years that the future direction of the VA system and the great worth and future value of the system will lie in its reaching out to become as relevant as possible to surrounding communities, and its reaching out to meet the new challenges for efficiency, planning, and coordination which today's social and economic problems call for.

Enactment and implementation of national health insurance will of course affect the VA medical system, but its independent and separate status must be maintained. The precise changes, accommodations, and reassessments will depend upon the shape of the specific national health insurance law enacted.

It is just misleading and not fair to the millions of American veterans who

depend on the VA health care system to suggest otherwise.

It is not change and reevaluation but rather stagnation and obsolescence that pose the major threat to the future effectiveness and continuity of the VA medical system.

So, for me, Mr. President, this report provides reassurance of the value of the care which the VA is presently providing and a challenge to find new and creative ways to continue meeting the needs which America's sick and disabled veterans have for health care from the Veterans' Administration.

I look forward to working with others on the Veterans' Affairs Committees and other interested committees in the Congress and with the very able Administrator of Veterans' Affairs, Max Cleland, and the VA's fine Chief Medical Director, Jack Chase, and with the very dedicated veterans' organizations as well as individual veterans, to find these pathways to future strength and integrity for the VA medical system. I will continue to study carefully the NAS report and await the report mandated by law from the Administrator of Veterans' Affairs, to be submitted 90 days after the NAS report, containing his detailed views on the National Academy of Sciences findings and recommendations. I note that the Administrator's report must specify the steps and timetable for those steps, to be carried out in not less than 3 years, which the Administrator proposes to take to implement the NAS findings and recommendations, and any disagrements and the reasons for those disagreements, which the Administrator has with respect to the NAS findings and recommendations.

I plan to schedule comprehensive hearings on the NAS and the Administrator's reports this fall.

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE CONDUCTS LEGISLATIVE HEARING BY CTS SATELLITE

Mr. STEVENSON. Mr. President, on Wednesday the Subcommittee on Science, Technology and Space conducted a legislative hearing by means of the communications technology satellite—CTS, the public service communications research satellite owned and operated jointly by the United States and Canada. The witnesses who testified on S. 421, a bill to establish a national climate program introduced by Senator PEARSON of Kansas, were located in the Federal courthouse in Springfield, Ill. They communicated with the subcommittee members in the Dirksen Office Building through a two-way video and audio circuit.

This experiment in public service communications was sponsored by the George Washington University's program of policy studies in science and technology. It was one of a continuing series of experiments designed to investigate applications of public service communications technology to the activities of Government.

With the completion of the Hart Office Building, the Senate will have new hearing rooms designed specifically to accommodate electronic coverage. The Corporation for Public Broadcasting is currently investigating the feasibility of acquiring access to commercial communications satellite facilities for public service uses. The National Research Council has recently proposed that the U.S. Government launch and maintain a public service communications satellite on a permanent basis.

In other words, we are approaching the time when Congress and other public groups will have routine access to communications facilities that will permit a much closer relationship between citizens and their legislative representatives in Congress. It will be realistic, for example, for Congress to conduct hearings in all parts of the world without leaving the Capital or requiring witnesses to travel to the Capital. It will be possible to conduct additional activities, such as town meetings and press conferences, at remote locations. Broadcasting these events through public television facilities will further expand the opportunities for individual citizens to witness and participate in the operations of Congress.

In 1973 and 1974, the Joint Committee on Congressional Operations, then chaired by Senator METCALF of Montana, conducted an intensive investigation of ways to open congressional business to electronic coverage. The Commission on the Operation of the Senate produced comparable recommendations in its work which concluded this year. The House of Representatives is presently conducting a 90-day experiment of closed circuit TV coverage of floor debate. Senator METCALF and 38 cosponsors have introduced Senate Resolution 153 that provides for an experimental period of broadcast coverage of Senate floor debates. I am hopeful this resolution can be adopted this year.

I can report that the CTS experiment last Wednesday was successful. The subcommittee received testimony on climate and weather from three panels of witnesses. We were able to question the witnesses without difficulty. A useful hearing record was compiled on this important subject. Although the temporary nature of the installation produced several minor problems with the audio circuit, these would not exist with permanent facilities.

Mr. President, Congress has needlessly lagged behind in adopting its procedures and facilities to the existing communications technology. As our experiment on Wednesday demonstrated, there will soon be additional opportunities for increasing public involvement in the work of Congress through the application of public service communications. We should be ready to use this technology in an open and responsible manner.

I commend the National Aeronautics and Space Administration and the George Washington University for their assistance in conducting this useful experiment.

Mr. President, I ask unanimous consent to have printed in the RECORD several newspaper reports of the satellite experiment conducted last Wednesday by the Subcommittee on Science, Technology and Space.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

HANDSHAKE ONLY THING MISSING DURING HEARING VIA SATELLITE

SPRINGFIELD.—"The only thing that was missing was the handshake," said Professor Verner E. Suomi of the University of Wisconsin, following the satellite conference Wednesday which linked Springfield with Washington, D.C.

It was the first Congressional subcommittee hearing to be held via satellite.

Through the use of two-way video and audio circuits, members of the Senate subcommittee on Science, Technology and Space could communicate from Washington with witnesses at the Federal Building in Springfield.

Each group could view the other on a television screen as each was being viedotaped. There was virtually no delay in communications as the signal traveled from Springfield to the satellite to Washington, back to the satellite and back to Springfield.

The satellite experiment was conducted by George Washington University of Washington, D.C., one of several institutions participating in the testing of various public service uses of the Communications Technology Satellite (CTS).

The satellite used is jointly owned by the United States and Canada.

The NASA Lewis Research Center in Cleveland, Ohio, provided the Portable Earth Terminal (PET)—a van set up outside the Federal Building used to transmit and receive the satellite signals.

The 35-foot van is complete with an 8-foot antenna mounted on the roof.

That antenna must be focused within one-tenth of a degree on the satellite for effective communication, according to Joseph Fiala, developing engineer for Lewis Research Center.

"But actually that focus causes no problem since the van is equipped to automatically track the satellite," Faila said.

In spite of all the complex equipment, Wednesday's transmission went smoothly. The only problem developed when one panelist failed to turn on his microphone. That was corrected quickly.

BETTER THAN DEBATE

"This is going better than ABC's telecast of the presidential candidate debates when they lost 28 minutes of production," said U.S. Sen. Adlai Stevenson, D-Ill., chairman of the subcommittee.

The use of the satellite was intended to save the time of the committee members, staff and witnesses and the expense of the transporting committees and witnesses. But Suomi didn't agree with a savings in his instance.

"I think it may have required more time to get to Springfield from Madison, Wis., than it would have taken to get to Washington, D.C.," Suomi said. "However, I've been to Washington many times but never to Springfield, and since I'm interested in Lincoln it is a real treat to be here."

Stevenson also enjoyed the contact with his home state.

"I've enjoyed this chance to be back in Illinois," he said.

Eventually it is hoped that satellites can be used by congressmen to contact their constituents. Falla also believes the president one day may use it to meet the demands of his time.

Meanwhile, the PET van will continue to travel across the country to conduct experiments in satellite communications.

SATELLITE-CARRIED HEARINGS LINK SPRINGFIELD, WASHINGTON

(By Lester Bell)

WASHINGTON.—Sen. Adlai E. Stevenson's subcommittee on science, technology and

space Wednesday pioneered an experiment in good government and satellite communication which could become the commonplace of tomorrow.

It may take time to sort out the implications of the two-way test of television signals relayed by satellite between the senators sitting in a Dirksen Senate office building hearing room and witnesses testifying in a Springfield federal courtroom, but the potential seems obvious.

Even the subject was engrossing and revolutionary, a proposed Senate bill, S. 421, to establish a national climate program to better understand weather and perhaps forecast it over a long range.

The three panels of witnesses clearly qualified as experts. They soon adjusted to the camera and addressed it as directly as if they were sitting at the witness table in Washington speaking to the senators. The effect on the hearing room receivers was as if the whole proceeding was taking place right here.

This new way to hold a hearing, in short, seems so natural it's a wonder it hasn't been used long before. Presumably, the satellite (jointly owned by the United States and Canada) has been hanging off the West coast of South America watching this whole hemisphere for some time now.

It took the combined efforts of Stevenson's subcommittee and George Washington University working under a National Aeronautics and Space Administration grant to conduct the first legislative hearing in which questions and answers were relayed by satellite.

NASA officials, understandably concerned about such a crucial test before the Senate subcommittee with legislative jurisdiction over their agency, anxiously watched the performance.

It was on-the-job training for NASA technicians, Samuel H. Hubbard, NASA's assistant communications director, conceded in a hallway interview Wednesday. His men were not studio cameramen proficient in live-action shooting.

He noted that the audio-visual signals from Springfield improved with the proceedings.

At times the voices from Springfield seemed somewhat muffled, but on the whole, the testimony was audible.

Hubbard said the undraped walls of the Springfield courthouse probably reflected sound and caused some muffling of voices. That probably occurred as well on Springfield receivers because the Senate hearing room walls are panelled and voices would tend to echo.

Dr. Robert S. Cooper, director of Goddard Space Flight Center, who described the Washington demonstration for the Springfield audience, said in an interview satellite relay has potential congressional application.

He said it means Congress is no longer limited to Washington, but it can now communicate with people it wouldn't ordinarily reach in public hearings on the great issues of the times. He and Hubbard agreed Congress can't conduct all hearings by satellite and will have to pick its spots with care.

Conceivably the audience could be widened if national television networks could tie into the satellite relay for live telecasts or later replay on evening news shows.

Should satellite-relay become as commonplace as its potential suggests, some lawmakers may have to sharpen up in hearings. Television has a clinical eye.

NEW DIMENSION: WITNESSES IN SPRINGFIELD—SATELLITE LINKS SENATE-ILLINOIS HEARING

(By Joanne Omang)

The Senate extended its vocal range yet another dimension yesterday by holding a committee hearing in which the senators were in Washington and the witnesses were in Illinois.

A special space satellite connection, different from and potentially much more versatile than network television hookups, provided two-way color picture and sound communication between members of the Science, Technology and Space Subcommittee of the Senate Commerce Committee and eight witnesses in the courthouse at Springfield, Ill.

The witnesses gave their views on pending legislation to boost long-range weather and climatic change predictions, and the senators watched them on three 25-inch television sets.

The hearing room audience normally has a good view of the senators but sees only the backs of witnesses' heads. This time, it was almost reversed, with the monitors and three cameramen partly hiding the senators while two additional TV sets showed the Illinois witnesses to the audience.

Although the sound occasionally recalled a mushy airport loudspeaker and failed briefly altogether at one point, Sen. Barry Goldwater (R-Ariz.) said the picture quality was much better than in a televised international forum he participated in some years back. "That one nearly drove me crazy sitting there watching myself speaking and moving my lips a hundredth of a second behind," he said.

Dr. Robert S. Cooper, director of the Goddard Space Flight Center in Greenbelt, explained in an opening statement the makeshift setup did not need the enormous broadcast and receiving towers that television stations now require for long range transmission.

Instead, the Illinois end consisted of a mobile van the size of an interstate bus parked next to the Springfield courthouse, he said. The Washington end was a similar van up on blocks out at the Goddard Center, which could have been brought onto Capitol Hill if the event had warranted it, Cooper said.

Yesterday, however, the proceedings were transmitted to Goddard by leased telephone cable, which was what had caused the brief sound failure, he said.

Transmissions from both ends were made at "moderate" power levels to the National Aeronautics and Space Administration's new Communications Technology Satellite, which rebroadcast them at "very high" power back down to earth, Cooper said. The satellite was launched 18 months ago and is "parked" in a stationary orbit 22,300 miles above a point off the west coast of Ecuador, he said.

The 200-watt power of the satellite is 10 to 20 times more than is normally available from satellite retransmission, Cooper said later, and is the key to the procedure. The power is provided by a solar energy panel 50 feet long that extends out from the body of the satellite like a ladder.

The system, which is a joint project of NASA and the Canadian government, has been used on a shared-time basis for a series of experiments linking doctors in remote areas including Alaska with specialists in continental U.S. cities for consultation on difficult cases.

It provided educational broadcasts to 2,400 scattered villages in India, "people literally in mud huts and out in open fields," Cooper told the hearing. The Indian government is "highly interested" in obtaining its own satellite to continue the program, he added.

"I expect this kind of communication will become ubiquitous in our country as the technology and the social impact of it become better known," Cooper said. He told reporters that George Washington University Prof. Frederick Wood of the Department of Sociology had been contracted by NASA to study the social effects of a year of experimental use and to monitor the costs.

Commercial or private broadcasters would have to buy their own satellites and terminal equipment at a cost as yet undetermined, Cooper said.

However, he said that three committee rooms in the planned expansion of the west front of the Capitol were being considered for permanently installed television equipment. "All that would then be required elsewhere would be roving mobile units out around the country and a small dish antenna on top of the building here," Cooper added. "Congress would then better be able to serve its purpose of getting closer to the people."

The witnesses in Illinois appeared unruffled by the unorthodox procedure and generally agreed that the legislation under review would aid them greatly in promoting advance knowledge of weather conditions.

TREES: NATURE'S SOLAR COLLECTORS

Mr. MUSKIE. Mr. President, the finite nature of many of the resources which our society consumes to support our life style has made us turn increasingly to renewable and recyclable sources of energy and critical material.

A recent article by Lester A. DeCoster, New England manager of the American Forest Institute calls attention to the role of wood and wood products as we come to grips with the finite nature of our resources.

The potential role of wood as one of our most valuable and adaptable resources is concisely presented in this interesting article. I recommend it to my colleagues and request unanimous consent to have it printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[Bangor, Maine, May 4, 1977]

MAINE COVERED WITH TALL-GREEN

(By Lester A. DeCoster)

If you live in Maine you probably drive by thousands of solar energy collectors every day; they're those tall, skinny things that turn green around the edges every spring; they're called trees and they cover 90 percent of the land surface of Maine.

Trees collect the sun's energy and lock it up in wood. Ignite a piece of wood and some of the energy comes radiating back. But you don't have to burn wood to greatly affect the energy picture. The National Academy of Sciences recently studied U.S. raw materials supply in relation to energy use and concluded that wood is the most efficient raw material available today.

Direct comparison of energy requirements for wood and non-wood components performing the same function is very striking. According to the National Academy of Sciences, steel floor joists require approximately 50 times more energy than their wood counterparts. Aluminum framing for exterior walls requires nearly 20 and steel about 13 times as much energy as wood. Steel rafters require 7 times the energy needed for wood rafters. Aluminum siding uses 4 times the energy of wood siding, and brick calls for 25 times the energy needed for equivalent wood siding.

David M. Smith, Yale University, Professor of Silviculture, recently released a report showing that Forest Management activities return 157 units of energy for each unit invested in management activities. This figure includes fuel for chain saws, tractors, etc., with an allowance for the energy involved in building the machinery. The comparable ratio for production of corn silage, one of the most energy efficient products of agriculture, is only about 15. In other words, modern forest management is about 10 times

as energy efficient as one of the most efficient kinds of agriculture.

Foresters already have the knowledge to grow at least two times the wood we are presently growing on most acres. Forest industry has strong programs to improve the efficiency of this natural process of growing trees. But State and Federal lands have been plagued by lack of funding and direction and land owned by private individuals, with the exception of outstanding examples, is relatively unmanaged. Forty-seven per cent of the forest land in Maine is owned by over 100,000 private individuals.

In a recent speech, John Calhoun, President of Forest Fuels, Inc., in Keene, New Hampshire, said, "No one has to be a genius, only a frustrated forester to see the forestry opportunities and challenges made possible by the 400 percent increase of the cost of energy over the past three years."

The amount of wood used in the U.S. is already more than 2 times the amount of all our use of metal. That is sure to increase as we use up non-renewables and as energy becomes more costly. We may lack oil and coal, but when it comes to trees, the renewable resource, Maine is the Texas of the Northeast.

LEGAL OBJECTIONS TO THE GENOCIDE CONVENTION DO NOT STAND

Mr. PROXMIRE. Mr. President, every day the embarrassment shared by the Members of the Senate for not having ratified the Genocide Convention grows greater. Since President Truman submitted the convention for ratification in 1949—a quarter of a century ago—a forceful minority has blocked affirmative Senate action by repeating again and again legal interpretations of the convention that have simply not stood the test of time.

The American Civil Liberties Union has carefully reviewed allegations of threats to civil liberties posed by this treaty and concluded that these fears are unwarranted. The American Bar Association had originally raised a number of objections to the Genocide Convention, but has since unanimously endorsed the treaty. The Defense Department has also joined the growing list of supporters of the convention.

Mr. President, Mr. Herbert J. Hansell, legal adviser for the Department of State, recently testified before the Senate Committee on Foreign Relations and forcefully refuted the legal objections that have been raised against the convention. For the sake of the millions who have lost their lives in a mass murder, and for the sake of the many whose lives are being threatened today by genocidal campaigns, I hope Mr. Hansell's testimony once and for all nails shut the coffin of frivolous arguments that have been voiced by opponents of this enormously important human rights treaty.

Mr. President, I ask unanimous consent to have the text of Mr. Hansell's testimony printed in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

STATEMENT BY HERBERT J. HANSELL

Mr. Chairman and Members of the Committee: I am very grateful for this opportunity to testify in support of the Convention on the Prevention and Punishment of the Crime of Genocide, or "Genocide Convention," as it is generally known. In coordination with the testimony by Deputy Secretary Christopher, I should like to focus on some questions that have been raised about the Convention, and various legal criticisms that have been directed against it.

Perhaps most fundamentally, it has been argued that genocide is not a proper subject for treaty making, and is essentially a subject within the domestic jurisdiction of states. But I believe it is generally accepted, Mr. Chairman, that genocide is a proper subject for the treaty power. As this committee pointed out in its most recent report on the Convention, some 83 nations are now a party to this Convention, and clearly these nations believe genocide is properly a subject of international concern. In addition, the United States is a party to other human rights treaties, including those on slavery and refugees. Most recently the Senate approved by 88–0 two treaties on the political rights of women. The day is past when it could be seriously contended that human rights are not appropriately the subject of international agreements. As President Carter said in his speech to the United Nations two months ago:

"All the signatories of the UN Charter have pledged themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim that mistreatment of its citizens is solely its own business."

It has also been charged that certain of the key terms of the Convention are vague. But the understandings which are attached by the Committee to the resolution of ratification that this committee has previously proposed, and also the draft implementing legislation, are both designed to define more precisely the meaning of such terms as "mental harm," and the phrase "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such."

It has been said that the proscription in Article III of the Convention against direct and public incitement to commit genocide is a restriction on free speech. But direct and public incitement to crime is not protected by the constitutional guarantee of free speech. As this Committee heard in 1970 from William Rehnquist, now Associate Justice of the Supreme Court and at that time an Assistant Attorney General, the constitutional guarantee of free speech would not be and could not be adversely affected in any way by the terms of the Convention. In 1969, in the case of *Brandenburg* v. *Ohio*, 395 U.S. 444, the Supreme Court reaffirmed that even advocacy of force is protected unless it is diverted to inciting lawless action and is likely to produce it.

It has also been asked whether state law will be overridden by the terms of the Convention. However, nothing in the Convention overrides state law. The proposed implementing legislation, if enacted, would expressly clarify that Congress does not intend to occupy the field, and would confirm that state laws not inconsistent with the legislation are not invalidated.

Question has been raised as to whether the Convention will enlarge the powers of the Congress. Once again, neither the Convention nor the implementing legislation contain any provisions which could have such an effect. Certainly the Congress can legislate the crime of genocide even without the Convention. Under Article I, § 8, clause 10 of the Constitution, the Congress is empowered "to define and punish . . . offenses against the law of nations." Approval of the Convention will require the Congress to exercise powers it already possesses, but does not enlarge those powers.

It has been suggested that if the United States adheres to the Convention, we will be confronted with spurious charges of genocide arising out of racial and religious discrimination; it also has been asked whether war-time combat might result in charges of genocide made by our opponents. Mr. Chairman, loose charges of genocide are not valid under the terms of the Convention, which requires the intent to destroy an entire group. This is a critical and essential element. The requirement of intent to destroy a group as such distinguishes killing or wounding in combat from genocide.

There has also been some discussion about possible use of international tribunals to punish defendants. It has been said that the International Court of Justice, referred to in Article IX of the Convention, would become a forum for trial. But of course neither the International Court nor any other international tribune has criminal jurisdiction and no such trial is possible.

As for the international penal tribunal referred to in Article VI of the Convention, the United States has no obligation to become a party to the statute of any such tribunal should it ever be established. For the United States to accept the jurisdiction of an international penal tribunal, an exercise of the treaty power would be required, and the advice and consent of the Senate by a two-thirds vote would be necessary.

I want to address the question of extradition, in view of some complexities involved and in order to allay any misunderstandings. Article VII of the Convention provides that the parties pledge to grant extradition of persons charged with genocide "in accordance with their laws and treaties in force" and provides that there is no defense to extradition on the ground that genocide may be a "political" crime.

Concern has been expressed that American citizens could be extradited for trial in foreign countries where the legal system does not provide for the kinds of guarantees to criminal defendants available in the United States. There are several points to be made in response.

First, U.S. law provides for extradition only where there is an extradition treaty in force which covers the crime in question, but the Genocide Convention is not an extradition treaty. The Convention simply contemplates that the crime of genocide will be added to the list of crimes for which Americans will be extraditable under any new extradition treaties we might conclude, or in any existing extradition treaties we may revise. At the present time, genocide is not listed as an extraditable offense in any of our extradition treaties.

Second, the United States does not negotiate extradition treaties with nations which do not permit defendants a fair trial. The possibility of a fair trial, even though the standards cannot be expected to match ours in every detail, is always a factor taken into account in deciding whether to negotiate an extradition treaty.

In addition, since these treaties may remain in force for many years, during which time the judicial system of the foreign country may change, certain procedural safeguards are built into our extradition treaties.

Such treaties require that the state requesting extradition must produce evidence of the crime sufficient to persuade a U.S. Court and the executive branch that the person whose extradition is requested would also be held for trial in the United States had the alleged crime been committed in this country.

Further, our extradition treaties provide that extradition will not be granted if the person sought has already had a trial or is undergoing a trial in the United States for the same act.

Article VI of the Convention provides that persons charged with genocide are to be tried by a competent tribunal of the State in the territory in which the act was committed. But the negotiating history of the Convention makes it abundantly clear that trial may also occur in the country of which the defendant is a national. The third understanding attached by the Committee to the proposed resolution of ratification makes this point as well, and it is further spelled out in the implementing legislation.

Moreover, Section 3 of the draft imple-

menting legislation sets forth the sense of the Congress that the Secretary of State, in negotiating extradition treaties, is to reserve for the United States the right to refuse extradition of a U.S. national to a foreign country to stand trial on a charge of genocide if the United States intends to exercise jurisdiction in the case, or the defendant has been or is being prosecuted for the offense in the United States. In brief, the United States may always elect to try a U.S. national and thus refuse extradition, no matter where the alleged crime had been committed.

Mr. Chairman, there is one very positive legal aspect of this matter that I believe has not received the attention it deserves, and that is the place of the Genocide Convention in the development of an emergency concept of international crimes, a concept that serves the interests of the United States and the world community. As you know, we are a party to a number of criminal law treaties, including the laws of war conventions, the treaties on aircraft hijacking and sabotage, the convention on the protection of diplomats, and treaties on narcotics trade, oil pollution, and others. Piracy has long been prohibited by international criminal law. We have also introduced at the United Nations a treaty on terrorism. And of course, these criminal law treaties to which we are a party, like the Genocide Convention and piracy charges, rely on our own court system for their enforcement.

In brief, we are a party to and we are in the process of developing a body of international criminal law that is important to the United States and to a peaceful world order. The Genocide Convention is one of the missing pieces in U.S. adherence to such a pattern of international criminal standards, and it is my hope that this situation will be corrected. As this Committee stated in its 1976 report on the Genocide Convention, what is really at issue is an attempt of a civilized society to curb the excesses of mankind and to set a higher standard of international morality.

That ends my prepared remarks, Mr. Chairman, and I would be happy to respond to any qeustions you or the members of the Committee may have.

HISTORIC EXPERIMENT BRINGS WITNESSES TO SENATE HEARING VIA COMMUNICATIONS SATELLITE

Mr. METCALF. Mr. President, the Senate Subcommittee on Science, Technology and Space, sitting in Washington last Wednesday conducted a legislative hearing with witnesses hundreds of miles away. Made possible by satellite communications technology—and by the far-sighted leadership of Chairman STEVENSON—this experimental use of television marks an historic "first" of great significance for the future, not just for the Senate but for the entire Nation.

Its importance lies, of course, in the potential for taking Congress to the people, permitting a closer relationship between citizens in all walks of life and those of us who represent them here.

Through the application of this technology, it will be possible to hear directly from the average citizen—the working man and housewife who are ordinarily unable to afford a trip to the Capitol—on legislative questions of interest to them. So-called "field" hearings, now being held only occasionally, can become a common practice, easily arranged, allowing local residents to engage in a "face-to-face" dialogue with Senators through a two-way video and audio hookup.

Mr. President, for too many years the Federal Government has been seen to be remote, unresponsive, insulated and untrustworthy. All of us sense the feeling of distrust whenever we are able to return to our home States, visits which have become more and more infrequent over the years as congressional sessions have steadily lengthened and the workload has continued to expand.

In these circumstances, there are compelling reasons for us to be looking for new ways of relating the work of the Senate to the people, for bringing more citizens into our hearings as participants, for listening to voices other than those of the professional witnesses we tend to hear year after year in the development of legislation.

Ultimately, if we can realize the potential of this technology and gain routine access to such communications facilities, the Senate and individual Senators could schedule "town meetings" with groups of constituents on a reasonably frequent basis.

Mr. President, 3 years ago the Joint Committee on Congressional Operations conducted extensive hearings on Congress and this institution's use of mass communications. Our studies at that time clearly indicated the need for vastly improving the availability of information about Government—about issues as well as how our constitutional system functions. And they also pointed up the potential of communication satellites for broadcast transmission of congressional hearings—and floor debates—directly to those areas of the country most interested in or affected by a given legislative issue.

Wednesday's experiment by the Science Subcommittee was limited to a closed circuit link between the hearing room and witnesses in Springfield, Ill. But the same technology can be used to direct public service broadcasts to local stations, allowing live or delayed telecasting of hearings or debate in any State or region which may be primarily affected by a particular bill or committee investigation.

Mr. President, I believe this opens the prospect for a new era in representative democracy. All of us owe Chairman STEVENSON a debt of gratitude for his leadership. I hope all Senators will consider the implications of this important step and encourage further exploration of methods of improving the exchange of information between the Senate and the American people whom it serves.

For the convenience of those unable to be present while the video and audio circuit was in operation, I ask unanimous consent that a memorandum and a letter from Chairman STEVENSON describing the experiment be printed in the RECORD at the conclusion of my remarks. The memorandum was prepared by Dr. Fred B. Wood, director of the program of policy studies in science and technology at the George Washington University, under whose auspices the experiment was carried out.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., June 2, 1977.

DEAR COLLEAGUE: On Wednesday, June 8, 1977, the Subcommittee on Science, Technology and Space will participate in a unique experiment in public service communications technology by conducting a legislative hearing through the facilities of the CTS (Communications Technology Satellite). Under the auspices of The George Washington University's program of policy studies in science and technology, this experiment will permit public witnesses in Springfield, Illinois to testify before Subcommittee members located in Room 5110 of the Dirksen Senate Office Building. The witnesses and Senators will communicate through a two-way video and audio circuit. This letter is to invite you and your staff to observe this experiment.

With the completion of the Hart Senate Office Building, the Senate will have new hearing rooms designed specifically to accommodate electronic coverage. The Corporation for Public Broadcasting is currently investigating the possibility of acquiring access to communications satellite facilities for public service uses and the National Academy of Sciences has recently proposed that the U.S. Government launch and maintain a public service communications satellite. Both Senate and House have been considering ways to expand electronic coverage of their legislative activities (a 90-day test of closed-circuit TV coverage of House floor debate is presently underway). In short, we are rapidly approaching the time when Congress will have routine access to communications facilities that will permit a much closer relationship between citizens in all parts of the country and their legislative representatives in Congress.

The test on June 8 is designed to explore ways of using this new technology effectively. The George Washington University is one of the officially-designated experimenters in the United States testing various public service uses of the CTS Satellite, operated jointly by the United States and Canada.

The hearing on S. 421, legislation to establish a national climate program, will begin at 9:00 a.m. in 5110 Dirksen Senate Office Building.

Sincerely,

ADLAI E. STEVENSON,
Chairman, Subcommittee on Science, Technology and Space.

HARRISON H. SCHMITT,
Ranking Minority Member, Subcommittee on Science, Technology and Space.

THE GEORGE WASHINGTON UNIVERSITY VIDEOCONFERENCING FOR CONGRESS: THE RESEARCH PERSPECTIVE

The June 8, 1977, hearing of the Senate Subcommittee on Science, Technology and Space is a historical event in its own right—the first congressional committee hearing via satellite videoconference. Senator Adlai Stevenson, Harrison Schmitt, and their colleagues will hear, see, and interact with public witnesses in Springfield, Illinois, over 800 miles away.

But just as important, this hearing is a crucial part of a long-term research project on congressional communication being conducted by The George Washington University.

Communication with citizens is essential to the job of Congressmen and Senators in their role as: public officials working to carry out legislative and representative responsibilities, ombudsmen for constituents who need help, and overseers of federal programs and monitors of thier effect on citizens.

However, effective communication with the people is becoming more difficult due to: longer congressional sessions and heavier Washington workloads, increasing demands on personal time and energy, and greater complexity in issues and legislation. Per-

haps more citizens now have a desire to learn about and particpate in the legislative process but find it difficult to do so because of inadequate current communication channels.

At the same time, American society is well into the so-called "Communications Revolution," a period when many of the major new tools of society are communications technologies like the satellite.

The purpose of the GWU research is to evaluate and demonstrate the potential of emergent communication channels—such as videoconference via satellite—to help improve public understanding of Congress and facilitate dialogue between congressmen and the people they represent.

The experiment of which the June 8 hearing is a part is the third phase of the GWU research:

Phase 1. Concept Definition (1969–1970); based on political and technical analysis, literature survey, and discussion with congressional staff.

Phase 2. Exploratory Assessment (1973–1974); based on interviews with a cross-section of congressmen and senior staff from the 93rd Congress.

Phase 3. Experimental Research (1976–1977); based on real-time demonstrations of congressional videoconferencing.

The research is being conducted by Drs. Fred B. Wood, GWU Project Director, Vary T. Coates, Associate Director of the GWU Program of Policy Studies in Science and Technology, Richard F. Ericson, GWU Professor of Management, and Robert L. Chartrand, Information Sciences Specialist at the Congressional Research Service. The original concept evolved from the early works of Ericson and Chartrand along with Dr. Louis H. Mayo, Director of the Program of Policy Studies and GWU Vice President for Policy Studies.

The primary research objectives of the Phase 3 experiment are:

To design and implement real-time demonstration of congressional videoconferencing, using NASA's communications technology satellite (CTS) and related technologies, with the direct participation of members of Congress and their staffs and constituents.

To identify, analyze, and evaluate the results of the demonstration with regard to the advantages and disadvantages of congressional videoconferencing as perceived by the participants.

To identify, analyze, and evaluate the results of the demonstration with respect to the direct and indirect effects or impacts, intended or unintended, of congressional videoconferencing for the Congress and the general public as well as for the participants themselves.

To clarify public policy alternatives and options available to the Congress and other relevant policy makers in regard to the development and use of congressional videoconferencing and related emergent telecommunication channels.

In Phase 3, each demonstration is selected on the basis of research value, congressional interest, and technical feasibility. The first demonstration involved a congressional-constituent meeting on April 15 between Rep. Charles Rose here in Washington, D.C., and high school students and local public officials in Raeford, N.C. The second demonstration is the Subcommittee hearing chaired by Senator Stevenson.

Congressman Rose and Senator Stevenson have been among the congressional leaders who have recognized the potential of new telecommunications technology to help Congress do its job more effectively.

The technology is now here. And recent developments suggest that congressional videoconferencing, such as that to be demonstrated on June 8 by the Senate Subcommittee on Science, Technology, and Space, can be a reality very soon if Congress and the public want it to be.

Based on extensive hearings and investigation, the Joint Committee on Congressional Operations concluded that Congress should proceed with actions to make broadcasting of floor proceedings and committee hearings feasible.

Studies and demonstrations are underway in both the Senate and House with respect to closed-circuit TV facilities.

Serious consideration is being given to wiring the new Hart Senate Office Building and Madison Library Building, as well as selected rooms in existing office buildings, for a range of TV, closed-circuit, and computer-based activities.

The Senate Rules and Administration Committee, the Commission on Senate Operations, and the House Administration Committee and its Information and Computer Policy Group are looking carefully at the role that communications and information technologies can play in supporting congressional activities.

The Corporation for Public Broadcasting has purchased commercial satellite time for programming distribution which may also be available for nonbroadcast public service uses, such as congressional constituent meetings.

The National Research Council has recently recommended that NASA resume support of R&D on public sector uses of satellite communication systems and specifically that NASA develop and flight-test a new generation of public service satellites to pick up immediately where ATS-6 and CTS leave off.

Thus the pieces are beginning to fall into place. The series of demonstrations of congressional video conferencing will help identify advantages and disadvantages and thus serve as a basis for appropriate public policy decisions. In this way, the potential for serving the public interest and strengthening democratic governmental processes will hopefully be realized.

THREE TRAINING CENTERS TO BRING 20TH CENTURY TO U.S. ATHLETES

Mr. STONE. Mr. President, the President's Commission on Olympic Sports, on which I was privileged to serve along with Senator CULVER, Senator STEVENS, and former Senator Beall, conducted a comprehensive study of amateur athletics in the United States. The purpose of our endeavor was to advance American amateur sports and encourage a greater share of our people to lead active lives.

The Commission's study found that the organizations responsible for administering the various amateur sports in this country lack a common purpose and an effective system of coordination. There has been constant squabbling among these organizations which wastes time and talents and threatens the rights of athletes to take part in world class competition that is so vital to their development.

Having determined the need for coordination and direction in amateur sports, the Commission recommended the institution of a central sports organization designed to achieve such a unified system.

At its quadrennial meeting on April 29 and 30, 1977, the U.S. Olympic Committee set out to amend its constitution so as to change its organizational structure along the lines recommended in the President's Commission report. All the amateur sports organizations, including the NCAA which withdrew from the USOC in 1972, were represented. Some of the changes adopted by the USOC follow very closely the recommendations of the President's Commission on Olympic Sports; others do not. On the whole, however, the USOC has made significant progress toward achieving voluntarily the major goals set forth in the report and is deserving of much credit.

In the near future Senator CULVER, Senator STEVENS, and I intend to introduce legislation to amend Public Law 805, the U.S. Olympic Committee Charter, to codify the changes that are essential for a unified amateur sports system. We will also be introducing legislation to provide Government financial assistance for amateur sports. The President's Commission report concluded that "Congress must implement some of these—Government financing—recommendations if the United States is to continue to attain the twin goals of broad based participation and winning medals." It is my belief that if there is genuine agreement among the major amateur sports organizations in America to participate in good faith within vertically structured, independent, sports governing bodies, then Congress should provide money by way of the governing body to assist in the development of amateur athletes.

I ask unanimous consent that the third article in a series about the U.S. Olympic Committee which appeared on June 9 in the Washington Post be printed in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STONE. Mr. President, this article discusses the USOC's plans to establish a major sports medicine program and several regional athletic training centers. The need for these types of programs was studied by the President's Commission on Olympic Sports. I commend your attention to the innovations taking place in amateur sports and the need for limited Federal assistance.

The article follows:

[EXHIBIT 1]

THREE TRAINING CENTERS TO BRING 20TH CENTURY TO U.S. ATHLETES

(By Paul Attner)

Athletes already have started to pour into what once was the international village for the 1960 Winter Olympic Games at Squaw Valley. By the end of the summer, more than 700 aspiring Olympians will have participated in this nation's first organized effort to keep up with those Joneses of amateur sports, the Soviets and East Germans.

The United States Olympic Committee (USOC) calls the Squaw Valley effort "a regional training center." Another permanent center is to open at Colorado Springs in midsummer, while a third, probably at Lake Placid, N.Y., is on the planning board.

The USOC will spend $5 million over the next four years to finance these development camps, which are designed for the sole purpose of helping the United States compete with the rest of the world in all Olympic sports, not just in those (such as basketball and track) where it always has been strong.

Another $2 million is being used to establish a major sports-medicine program at each training center. Through this program, the USOC hopes American athletes can start utilizing the same complex medical data that has benefited athletes in Communist-bloc countries.

"All of a sudden, we aren't sitting back," said Jerry Lace, USOC assistant director of operations who is in charge of setting up training centers. "This is a new position for this country, but it's one we have to take.

"We've never been into program or facility development in the past. Maybe we should have been, but that is hindsight. But what the USOC has done now is to recognize that a lot of small sports can't afford to develop facilities or athletes on their own. So we are helping them do it."

USOC officials say they aren't striving for the authoritarian sports development concept that is the basis of the East German athletic program. But they also admit that without more serious attention to organized athletic development and sports medicine, this country will fall behind in international competition.

"How much longer can we put up with the fact that we don't have one qualified hammer-throw coach in this country, or just one international speed-skating rink?" asked former Olympic rower Larry Hough. "That is why we need these centers. It's incredible that a country like this one can put up with such deficiencies."

Jerry Lace sat in his office at Olympic House in New York City—the headquarters of the USOC—and pointed to a schedule on his desk.

"We've got a soccer team in Squaw Valley now and, as soon as school is out, we have basketball players and wrestlers coming in," he said. 'We've got a women's international basketball tournament scheduled there for later in the summer with six teams.

"By the time August is over, we'll have kayakers and canoers, field hockey players, rowers, speed skaters, swimmers and weightlifters."

What amazes Lace is that word about Squaw Valley is just now being formally spread to the various American organizations that run the 32 Olympic and Pan American sports. Yet all 360 available beds at the Squaw Valley training center will be filled throughout July and August and the camp already is booked at 50 per cent capacity for this year's full 52-week operation.

"We eventually will have a 700-person capacity out there, but that will come later. From the demand we have now, we won't have any trouble filling the spots."

The Squaw Valley Olympic site has been owned by a number of private companies since 1960. The USOC now is leasing its extensive facilities, all of which are within eight miles of the village.

How these facilities are utilized is being left up to the governing bodies of the individual Olympic and Pan American sports.

Some may choose to send novice competitors and give them thorough training in fundamentals. Others may decide to send more advanced performers for more detailed instruction.

The sports must provide the coaches and the training program plans. The USOC provides a permanent administrative staff and picks up expenses for all the athletes once they arrive at Squaw Valley. Travel expenses either are paid for by the sports or out of the athletes' own money.

"We are giving the sports the freedom to go in the direction they think best for them," said Lace. "In addition, we also hope to have seminars, forums, guest lectures and so forth that will expose both athletes and coaches to the latest advancements in athletics.

"I'd be very surprised if we don't start developing international competitors in all those smaller sports which have never fared that well in this country. I think the opportunity is finally here for these sports to start to flourish."

In addition, another $9 million (compared with $2.1 million in the four years prior to the 1976 Games) is being budgeted through the Moscow Olympics for sport-by-sport development. These funds will be distributed directly to individual sports, which first must submit a four-year development plan to the USOC.

"The sports can use this money in any number of ways," said Lace. "They can start a series of minicamps to get people familiar with their sports. Or they can use it to finance international competition for their skilled athletes. It depends on what way they feel their area can be best served."

The Montreal Olympics were riddled by stories of athletes resorting to blood doping, steroids, air inflation, electrical stimulation of muscles and other such medically mysterious ways of improving performances.

Those stories rarely involved American athletes. Indeed, the joke was that Americans couldn't be involved because they didn't known anything about the procedures.

To many American athletic officials, the joke wasn't very funny. Not that they advocated illegal means of improving performances. It was simply plainfully obvious to them that in the area of sports medicine, this country was not keeping pace with some of its closest international rivals.

The sports medicine programs being established in conjunction with the regional training camps are designed to change this situation. For the first time, an effort is being made to centralize the vast but fragmented sports medicine information that previously has been available in the United States—and to develop research in those areas where knowledge is lacking.

"You've got to remember that the average age of our athletes at the last Olympics was 25," said Dr. Irv Dardick, who is chairman of the USOC sports medicine committee. "That means that most of our athletes were out of college and were self-coached.

"They are going about their preparation on a hit-and-miss basis. Should I run five miles today or three? Should I lift 200 pounds 20 times or 10? What about steroids? Will they do me any harm? Or good?

"They don't have anywhere to turn for the answers. That's why this sports medicine program is so important. We aren't looking to manipulate but we want to provide practical, needed help for anyone who wants it."

This help will result from the use of $250,000 worth of medical equipment that is being installed at Squaw Valley. Six separate medically related areas will be accented:

Biomechanics. Through a series of photographs taken at 1,000 frames per second, every movement of an athlete can be recorded and then plugged into a computer for comparison with what is considered the perfect motions in that particular sport. Athletes then can be instructed as to how to better use a certain joint or what muscles need strengthening. Resulting changes in technique are designed to improve performances.

Nutrition. What are the best diets for various sports? Are vitamins helpful to athletes? "You'd be surprised," said Dardik, "the contrasting theories existing today regarding nutrition and the athlete."

Exercise physiology. "We need to have more accurate training programs," said Dardik. "It's difficult for the athlete to know if he is overtraining or undertraining. Maybe he is really going about the whole thing incorrectly."

Sports psychology. Dardik says this is the area where "athletes might use certain biofeedback approaches to athletic competition. He can learn to relax better, to control his heartbeat through mental concentration, to get better self-discipline."

Injury treatment. Experts long have called for better-developed and coordinated approaches to the prevention and treatment of athletic injuries. F. Don Miller, executive director of the USOC, said that the medical program would become "the first centralized place where we can coordinate all this information in the United States."

Research. "We want to go into blood doping, steroids and in these other areas that have sprung up in athletics," said Dardik. "Our purpose here is to leave no stone unturned. We want to find out what these things mean and then develop policies to govern their use.

"We want to strip away the mystery surrounding them. As long as athletes think they are being used, they carry some sort of mystique. We want to change that."

The bottom line at the Olympic House, as it is anywhere an enterprise is expanding rapidly, is money. The USOC has ambitious plans that will cost millions of dollars. And that money has to come from the private sector of the economy.

Tht USOC does not want extensive government aid, fearing that along with the funds will come government meddling. What USOC officials like Miller would like to see is limited federal assistance, confined mainly to facility development.

Miller is convinced that private funds can be raised to finance the USOC's current four-year budget of almost $26 million, which is double the last four-year budget prior to the 1976 Olympic games.

"We have found that Olympic interest is at an all-time high," he said. "People are excited by what we are doing and they are willing to give money toward something that is positive and doing something for this country."

Others don't share his optimism. USOC president Robert Kane believes that, "It will be difficult to raise $26 million without government help. Very difficult. That's a lot of money."

What Kane and others are looking for is congressional approval of, among a number of possibilities, an Olympic coin program, a tax-credit program and a tax write-off program that would allow individuals to check off contributions to USOC on their federal tax forms.

"We are optimistic that Congress will give us help before it adjourns in October," said Kane. "It will come, we hope, along with approval of all the changes we have made in our bylaws."

Miller admits that Congress at least will have to supply money for the regional training centers. The $6 million set aside for those centers and the $1.5 million for the sports medicine program are over and above the $26 million in the four-year budget.

"We've begun programs that people have asked for for years," said Miller. "Now those same people have to help us keep them going or we'll be back where we started."

THE IOWA WOMEN'S MEETING

Mr. CULVER. Mr. President, this weekend an important conference is being held in Des Moines. The Iowa Women's Meeting is part of a nationwide series of conferences designed to identify inequities based on sex, and to plan for constructive policy changes. It was planned by the Iowa Coordinating Committee for International Women's Year, with funds appropriated by Congress in 1975. A portion of the funds awarded to Iowa is being used to insure that women from a wide variety of backgrounds will be able to attend, and I believe it is important to note that financial reasons will not be a barrier to participation.

This meeting is representative of a long-overdue national movement, and the considerable response being shown by the women of Iowa is an indication of its need. Women are making themselves heard more and more in all facets of political, social, and professional life, and their dedication and perseverance are finally being widely recognized.

The Iowa Women's Meeting, and others like it, are part of the World Plan of Action adopted by the delegates of the

World Conference of International Women's Year which was held in Mexico City in June and July of 1975. This plan provides guidelines for national action over the 10-year period from 1975–85, designated by the United Nations as a decade for women, and outlines the minmum goals to be achieved by 1980, when a second world conference is scheduled.

The primary goals of the Iowa Women's Meeting are to promote discussion of women's concerns, focusing on and reexaming barriers faced by Iowa women; to recognize women's achievements and contributions, emphasizing the accomplishments of Iowa women in a wide variety of activities; to develop a State plan of action; and to elect 22 delegates to the National Women's Conference being held in Houston, November 18–21 of this year, when a national plan of action will be adopted and presented to the President and Congress.

Mr. President, I wish to commend the Iowa women who have been involved in the planning of this meeting, as well as the women in other parts of the country who have worked so long and hard on these efforts. I am convinced that the conference will make a vital contribution to the goal of equal treatment and opportunity for women.

COLUMBIA, MD.

Mr. MATHIAS. Mr. President, one of the great things about America is that, although we have long since tamed our last frontier, there are still pioneers among us. They are the pioneers of the spirit, the pioneers of the future. James S. Rouse, the founder of Columbia, Md., is one of them and in their vanguard.

Later this month, Columbia, Md., will celebrate its 10th birthday. But, because Jim Rouse is a man far ahead of his time, Columbia at 10 is younger, more refreshing, and more revolutionary than most projects still on the drawing boards of America's planners.

Today, I ask my colleagues to join me in saluting the great achievement that Columbia represents and the great man who made that achievement possible. The dimensions of a Jim Rouse are not easily encompassed. But John B. Willmann in an interview published in the Washington Post on June 4, 1977, came very close to conveying the extraordinary dimensions of the extraordinary Jim Rouse. I ask unanimous consent that the Post article, entitled "Rouse's New City Marks 10th Year," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 4, 1977]

ROUSE'S NEW CITY MARKS 10TH YEAR

(By John B. Willmann)

On June 21, the new city called Columbia, Md., home of 45,000 people, will mark its 10th anniversary. If any one person is responsible for reaching this milestone, it's James W. Rouse, chairman of the board and chief executive office of the Rouse Co., parent firm for the development of the area.

But Jim Rouse is not taking even a tiger's share of the credit for Columbia, which has more than 13,000 apartments and houses and whose facilities range from 50 tennis courts and two golf courses to nearly 2 million square feet of office and retail space and four large industrial parks. The latter provide employment for some 20,000 workers.

"I could leave here tomorrow for Tibet or Tahiti and the place would run well without me," said the 63-year-old developer. He says he has no plans for a radical career change. "Retirement doesn't interest me," he says. "Besides, there's still too much more to be done here and I'm terribly enthused," said Columbia's No. 1 resident.

A native of Maryland's Eastern Shore (where he still has a getaway retreat) and a mortgage banker of considerable stature here and in Baltimore, Rouse nursed a dream of a new town for some years. He quietly acquired about 15,000 acres in Howard County toward that dream in the early 1960s.

Columbia was born with the help of a group of carefully selected experts and the financial backing of Connecticut General Life Insurance Co., which increased its investment in Columbia two years ago when development was stagnant across the land.

Rouse talks about the development of the privately financed new city between Baltimore and Washington in human terms.

"This was a great day," he reminisced. "Our landscape architect, a native of Prague, became a citizen. He is now living in his third Columbia house, something (costing) around $100,000. He has participated in the American dream of home ownership.

"And there's another story about a woman, over 60, I'd say, who came up to me at an event held by the League of Women Voters. I remember because she had some nice things to say about living here. But what was most important to me was her view that living in Wilde Lake (a Columbia village) made her aware for the thing time in her residential life that she counted."

"Counting" is important to Rouse where people in Columbia are concerned. "We have more than a hundred organizations here and people participate. They are neighborhood-conscious and they turn out for meetings and activities. They use the garden plots and they like our 'gang mail boxes,' which are inconvenient. But they bring people together. And we do have a racial-ethnic openness that was part of our original plan."

Columbians tend to respond to issues, according to Rouse. In one instance, a temporary siltation pond was built, in line with environmental rules, to handle runoff during construction. But in the meantime, it had become a sanctuary for wild life, and when the sewer line was connected, the county said the pond had served its purpose, "our people wanted to keep the pond over the sewer. It's that kind of public reaction that makes us an unusual city," Rouse said.

The developer recognizes that Columbia is imperfect. "We have faced a lot of issues with Howard County and also within ourselves. For instance, we had a HUD (Housing and Urban Development) grant to study an ideal system of transportation. And our suggestion was for an overhead rail system. But we couldn't get the grant to build it. Why? Because we are private. So the grant went to Morgantown, W. Va. I think destinations and housing are closely related. We do have a bus system to minimize the reliance on personal cars for transportation. A package plan provides bus service along with other facilities in the recreation area. We have public schools, three universities and all sorts of adult education programs."

Are Columbia and other new towns mainly for young couples?

"Not at all," said Rouse. "Two school teachers retired here in 1969 and they have been among our most enthusiastic residents working at volunteer jobs. There's no special area for adults or retirees but our wide choice of housing enables older persons to find what they want in a normal mix of people, which many of them seem to want."

Is Columbia safe?

"That's a relative matter but a recent survey indicated that 91 per cent of Columbia residents had no fear on walking our streets at night. I think that's good. And the fact that there are people on the streets is one of the reasons for the feeling of security. Robert Matthews, the police chief of Howard County, rates Columbia as good in terms of personal safety and he said that our people tend to communicate with one another in terms of what's happening. Thus, they're also more conscious of personal safety of one another."

According to Jim Rouse, Columbia has many of the problems of people living elsewhere. But it also has a post office (in Oakland Mills) manned by volunteers, a family life center, a Columbia bank, a community medical care plan and a free telephone book that is also a directory. "And we have about 15 real estate offices here. About 40 per cent of our new houses are bought by Columbia residents. That's one of the dividends of having a good supply of rental housing. People who rent here tend to buy and stay here."

Originally, it was estimated that Columbia would reach its maturity and a population of about 100,000 in 1982. But that projection was off base. Now Rouse figures it will take another 12 to 15 years to complete the new city.

Columbia is governed for the most part by its community association under the direction of Howard Research & Development Corp., a subsidiary directed by Michael D. Spear, the new town's unofficial mayor in its dealings with Howard County.

How do Howard County residents feel about Columbia?

Rouse estimates that 10 to 20 per cent "like us quite a bit and a similar number dislike us, with about 60 to 80 per cent taking a middle ground."

While Columbia celebrates its anniversary in community style, beginning June 21, a group of the original "think-tank" planners will return for an appraisal. They probably will take a lot of heart from a comment of Columbia's newspaper editor, Jean Moon, to Jim Rouse: "Our people think they can do something about it, what ever it is."

Rouse, who has grappled for more than a decade with the problems of his new city and who maintained land prices when other towns were going down the drain, sees currently brighter financial skies and an opportunity to do more things well while maintaining the environment and encouraging development of new homes (several dozen builders are active in Columbia), more business, more light industry and more jobs.

"Looking back, I can see how we could have done some things better. We had high hopes and we didn't create a perfect city but we are still trying. And I'd welcome a chance to do it again and do it better," said Rouse.

THE MORAL AND ETHICAL CLIMATE IN TODAY'S BUSINESS WORLD

Mr. CHURCH. Mr. President, although the recent stir over corporate bribery disclosures has died down somewhat, in its wake a new interest in corporate ethics is emerging. This growing concern for ethics and morality in today's business world was the subject of a recent speech given by William M. Agee, board chairman and chief executive of the Bendix Corp., before a conference of Rotary International in Boise, Idaho. The comments of this outstanding native son of Idaho are important, I believe, in revealing the current state of the art of doing business. at home and abroad. Mr. President, I ask unanimous consent that his speech, entitled "The Moral and

Ethical Climate in Today's Business World" be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

THE MORAL AND ETHICAL CLIMATE IN TODAY'S BUSINESS WORLD

(By William M. Agee)

I'm sure you can't wait for me to get into the subject of morality and ethics and settle it once and for all. It's a long time, as the preacher said, between sermons. But before I do that, let me say it "once more with feeling": I'm really happy to be here.

Managing Bendix, as you can easily imagine, means operating all over the world. I'm on the road a great deal, and I sometimes feel like the tourist in that famous old cartoon who says to his wife: This is Thursday, so we must be in France. But I don't need a calendar to know when I'm back in God's country. Boise is where I'm from. I can feel it, so to speak, in my bones.

This is not merely sentiment. It's a statement of fact. And furthermore, it is not unrelated to the subject at hand.

Big business today is increasingly international in scope; and even small businesses are affected by the interdependence of our economies. Nowadays it is not only goods and services but what the economists call the factors of production—capital, technology, even labor—which move and flow from country to country. This mobility creates problems, or course, but it is a powerful and efficient mechanism for allocating global resources. Governments are constantly tinkering and interfering with it, far too much in my opinion, but nobody seriously believes that it can or should be brought to a halt.

So we live, increasingly, in an international economy. But this cannot obviate the fact that we are all rooted somewhere. We all come from Boise, if we are lucky, or from some less exciting place, like Tokyo, Rome or Casablanca, and this means that as we move out into the business world we find ourselves dealing with people whose language, values, methods and prejudices are quite different from our own.

Here, I think, we have one clue to the moral and ethical climate in today's business world. It's a troubled climate for a number of reasons, some of which have less to do with ethics than with politics and economics; but one obvious factor, surely, is that our international operations have brought us face to face with an old and very difficult moral problem. This is the problem of relativity. In the 16th century, the French philosopher, Montaigne, was struck by the fact that "What's right on this side of the Pyrenees," as an old proverb put it, "is wrong over there"—meaning in Spain. And today, of course, we are dealing in societies which are a good deal more distant from each other, morally and geographically, than France and Spain. We have to decide whether our principles of behavior are absolute and universal—or whether we obey the ancient maxim and "Do in Rome as the Romans do."

In normal times, if there are any such, this might have been no more than a subject for philosophical speculation—but these are certainly not normal times.

For some years now the atmosphere in the business world has been soiled by reports of scandalous behavior. Week after week we have been assailed by a lurid series of revelations on payoffs, kickbacks, bribes and illegal political contributions. These events have shaken foreign governments, embarrassed our foreign policy and forced the chief executive officers of several of our largest corporations to resign. Investigations have been launched by the S.E.C. and the I.R.S. and, inevitably, a half dozen bills have been introduced in Congress. . . . And all this, needless to say, came hard on the heels of scandals in Washington which had badly tarnished first the executive and then the legislative branches of our government. Americans were left with the impression—and, according to the opinion polls, they have come to believe—that their major institutions were hopelessly and irremediably corrupt.

So we have a problem. And the conventional wisdom would have us believe that it is a very grave problem—one which places the very survival of our business system in question.

But does it, really? I know that it is always fashionable to take the direst possible view, but suddenly the proposition that our corporations are rotten and doomed to extinction because a few people were caught with their hands in the till strikes me as exaggerated—even wrong. In fact, the more I think of it the more incongruous it seems. There's a character in "Twelfth Night" who, as Shakespeare says, is "sick of self-love" . . . Well, sometimes we seem to be sick of self-hatred—and for business people I cannot imagine a more pernicious kind of sickness, one that mudies the judgment and paralyzes the will.

Maybe it's because we live in a media-dominated world, which consumes sensation at such a fearsome rate; maybe it's because we've been through an election, an inauguration and into a new administration; maybe it's the Boise atmosphere, which exudes serenity and peace. Whatever it is, I suddenly find it impossible to believe that those opinion polls really mean what they appear to be saying, and I am struck by the fact that, after all the furor of these past years of scandal and disgrace, after tons of newsprint, hundreds of study seminars and innumerable congressional hearings and speeches, the problem of improper payments, seems slowly but unmistakably to be receding into the past.

Now, let me not be misunderstood. I am not suggesting that it was all a mirage, that these things did not happen, that they were not reprehensible or important. Of course they happened. Of course they were reprehensible. Of course they were important. But the fact remains—not only are they receding into the past but they have become something of a bore. This is rather odd—but it is a fact. And it seems to me that it tells us something about ourselves and the way we work.

What it tells us, I think, is not that the problem of morality has been solved and put behind us—the Second Coming has not yet occurred. Nor would it be fair to say that it has simply been swept under the rug. The events of the past few years have amounted to a sort of trial by fire—a process of self-examination under pressure which, I submit, is characteristic of the American corporate system. In one way or another, just about every publicly held company in this country will have been through this process. And none will emerge unchanged, neither the relatively righteous—the overwhelming majority—nor the small number whose sins were uncovered and exposed to the public wrath.

My point is that the system, in the time-honored phrase, has worked. Our sins were uncovered noisily, as they always are, and with so much gusto that it was easy for the impressionable to believe that we were going to hell in a handbasket. Well, maybe we were. But somehow we haven't. And now that the dust has begun to settle we can survey the scene, estimate the damage and get on with our job.

To get on with the job, however, can no longer merely mean that we have goods and services to produce and distribute, people to recruit and train, assets to preserve and enhance. These are practical tasks. We know how to get our hands—and our minds— on them. But this is not all. Faced with the enormous non-sequiturs of public opinion, we also know that we must make an effort to explain what we are about. And this is a very different kind of task.

One of the effects of the crisis was to remind us—a reminder we did not really need—that our large corporations have long ceased to be private institutions, in any meaningful sense of the term. It has become commonplace to say that our companies today are accountable not only to their shareholders and their employees but also to what is amorphously called the public, which may mean anything from a Sierra Club to the F.T.C. or a congressional committee. Business, as we say, has become everybody's business. And this means that the self-examination to which I have referred has been, and must continue to be, a very public affair.

The striking thing about our corporate system, in fact, is that it has become so open, so vulnerable to pressure, so tentative about its future, that it is scarcely a system in the ideological sense at all. Our managers continue to talk about private enterprise and the market economy and the entrepreneurial spirit, but they are aware that these concepts are changing and, indeed, that change has become the one great constant of corporate life.

Now this, it seems to me, is a specific case in point. The morality flap has been—among other things—a test of our ability to adapt. It was hardly a pleasant experience, but I think it fair to say that the results, for the vast majority of our companies, have been conclusive.

The key to the process, of course, was disclosure. We did not do it willingly or happily, but we did it. And many companies disclosed not only what they were legally required to disclose, as publicly held companies, but a great deal more. They were painfuly aware that personal and professional damage would result, but they had come to understand that these were lesser evils compared to a cover-up and the festering infection it brings. And this, of course, helps to explain something that so puzzled our friends abroad—why, once we had become aware of the problem of improper payments, we indulged in what appeared to them a veritable orgy of self-flagellation.

The point is that there is no way, in a society like ours, with the media, the regulatory agencies and the congressional committees all competing for public attention, to ensure that disclosure will be measured, moderate and in proper perspective. It tends to be a rough-and-tumble business under the best of circumstances, and in this case, of course, it had all the elements of a prime time spectacular—royalty, money, sex and foreign intrigue!

That much is history. But disclosure, after all, was only the beginning of the process. While the media storms were raging and desks were being pounded on Capitol Hill, the real business of adaptation got under way. Corporate counsel began working their way through the stacks of questionnaires which arrived, inevitably, from the I.R.S. and the S.E.C. Boards of Directors met and set up procedures—such as audit committees—to measure the extent of their problem, if indeed there was a problem. Our business statesmen made some statesmanlike speeches. The Conference Board, the trade associations, the public interest groups formed committees, organized meetings and seminars, issued publications. In short, corporate America agonized over the problem, analyzed it, determined that it was real and methodically set to work.

For a professional manager, remember, a problem is manageable by definition—otherwise it ceases to exist. So it is not surprising that the philosophical aspects of the morality issue have been left, on the whole, to the academics, journalists and other outside observers. Corporate people have concerned themselves with practical procedures . . . Somewhere out there, say, a harbormaster is holding up a shipment of perishable goods. He is demanding five thousand dollars, failing which our shipment, which is worth twenty times as much, will be totally lost

What do we do? The harbormaster, of course, is the prime minister's brother-in-law, so there is no point complaining to the police.

The answer, perhaps, is in Kant's categorical imperative or somewhere in Spinoza, but the American corporate response—lacking these resources—has been simply to review corporate policies to ensure that they were appropriate and effective in cases of this kind and then to see to it these policies were understood and applied. Effective, of course, is a relative word, and every story could not have a happy ending; but the techniques were the familiar ones; definition, decision, communication and control.

Now obviously there is far more to the problem of corrupt practices than is suggested in the example I have given. And, for that matter, there are many other issues which affect the moral and ethical climate in which we work—regulatory issues, for example, tax rules, industrial and community relations—and these are no less important for being, at the moment, less prominently in the public view. Time is lacking, in any case, to examine these issues today. But the point I have been making is simply that we do have the resources to deal with them—which means to understand them, to reduce them to size and to manage them, just as we are doing with the problem of improper payments abroad.

And this, perhaps, is enough to explain why this problem now seems to be receding into the past. We have folded it into our standard operating procedures. And in that sense it is under control.

Let me conclude, then, by briefly noting what our own company has done to ensure that our business is conducted, here and abroad, in a legal and ethical manner.

First, we made it clear, publicly and within the company, that we insisted on a simple, unambiguous and uncompromising standard of honesty in our operations. This had always been Bendix policy, but we took pains to reinforce it. No bribes, no kickbacks, no illegal contributions or improper payments of any kind.

Secondly, we organized the audits and other procedures which were required to determine how vulnerable we were on this issue. As it happened, we found the company in excellent shape.

Thirdly, as our audits revealed some confusion as to definitions—between a bribe, for example, and a de minimus payment such as a tip or a Christmas gift to a customer or a supplier—we refined our definition, established more detailed guidelines and carefully stipulated approval and reporting procedures.

Fourth, we began the task of spelling out these more detailed instructions and communicating them throughout the company.

Fifth, and finally, since we are a multinational corporation, Bendix Corporation conforms its policies and practices to the voluntary guidelines adopted on June 21, 1976 by the Organization for Economic Cooperation and Development. These guidelines, negotiated by the 24 member states of the O.E.C.D. over a period of several years, define the rights and responsibilities of international companies with respect to such matters as investment, taxation, inter-company pricing, the environment and employment.

This is what we are doing. I have outlined our Bendix program not because we are exemplary in this respect, but simply because I am more familiar with it than with the procedures of other companies. With our 80,000 employees around the world and the highly diversified structure of our company, it will be some time before we are entirely sure that everyone has got the word—and that everyone is living by it. In fact, we may never be entirely sure. But we can be sure that we are doing what it is within our power to do.

In Toynbeean terms, there has been a challenge—and we are making our response. But of course the challenge did not begin with the problem of improper payments, nor will it end there. And the significance of the response, as I have tried to show, is that what purported to be a great crisis of mortality and ethics, a threat to the survival of our business system, has been reduced—and properly reduced—to a series of practical problems.

Now, finally, what does this do for our moral and ethical climate? Well, that remains to be seen. Hemingway liked to define courage as "grace under pressure." What we have been talking about is something akin to it; in a modest way: good sense, under pressure. It does not pretend to solve all our problems, but I believe it will help to clear the air.

THE DEATH OF G. D. GRICE

Mr. THURMOND. Mr. President, South Carolina has lost one of its most distinguished educators. On Tuesday, May 17, George D. Grice, who in his 50-year career was a principal, a headmaster, and twice a college president, died in Charleston at the age of 76. Dr. Grice compiled an exceptional record of public service, both as a teacher and administrator and as a member of the South Carolina General Assembly, and I thought my colleagues would like to know more about him.

He received his bachelor's degree from my alma mater, Clemson College—now Clemson University—and his master's from Columbia University. Clemson rounded out his academic credentials by awarding him an honorary doctorate in 1948.

Mitchell School, in Charleston, is the school of which he was once principal. It was there that he first occupied an administrative post, having previously confined himself to teaching. Later in life he was headmaster of Beaufort Academy and the president of Limestone College in Gaffney. He also founded Charleston College Preparatory School for good measure.

He will be best remembered, though, for his achievements at the College of Charleston, where he was on the faculty for 44 years, 25 of them as president. During his tenure, he showed particular interest in marine sciences, stimulating and sponsoring important research in this field. A strong advocate of independent education, he was instrumental in making the College of Charleston, after a century and a half of State and municipal support, a private institution in 1949—after his presidency it resumed State support.

On retiring as president of the College of Charleston in 1966, Dr. Grice was elected to the State House of Representatives. Only 1 year later, he was elected to the State senate. In Columbia he proved to be a colorful and effective legislator, and won many friends in both parties. He was one of the few Republicans in the legislature, and his prestige helped immeasurably as our party strove to gain credibility and respect.

I consider it a privilege to have known Dr. Grice, and to have enjoyed his friendship, and I shall miss him very much. So will countless others across the State, in education, politics, and in all the walks of life which his students have entered.

I wish to extend my sincere condolences to his surviving family. These include his son, Dr. George D. Grice, Jr., of Woods Hole, Mass.; his daughter, Marguerita G. Armas of Charleston; his sisters Ruth B. Grice and Dorothy Grice, both of Charleston; and a number of grandchildren. In the midst of their sorrow, I hope they will be able to remember how fortunate they were to have so fine a father, brother, and grandfather.

Mr. President, at the time of the death of Dr. Grice, several articles concerning him appeared in the newspaper in his beloved Charleston. In order that my colleagues may be able to supplement my account with the additional information they contain, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Charleston Evening Post, May 19, 1977]

DR. GEORGE D. GRICE

A distinguished scholar, educator and public servant, Dr. George Daniel Grice spent a lifetime improving the quality of Southern education.

He was a graduate of Clemson College and Columbia University. He began his teaching career at the High School of Charleston, 54 years ago. In 1932 he joined the faculty at the College of Charleston and 13 years later he was named president of the college, serving in that capacity until his retirement in 1966.

He served in the S.C. General Assembly, both as a represetative and as a senator. He was the founder of Charleston College Preparatory School, president of Limestone College and headmaster of the Beaufort Academy. His other high offices and honors were numerous.

On the occasion of his retirement as president of the College of Charleston more than a decade ago, Dr. Grice said:

It is the privilege of few to be born, to have lived and to be allowed to earn one's livelihood in Charleston. These privileges have been mine and I am humbly grateful. Surely my lines have fallen in pleasant places . . .

Dr. Grice's death at age 76 has ended a long and productive life, and is a cause of sorrow to his many friends.

[From the Charleston News & Courier, May 20, 1977]

G. D. GRICE, FORMER COLLEGE HEAD, DIES

George D. Grice, 76, retired president of the College of Charleston and a former state senator and representative, died Monday night.

The funeral will be 3 p.m., Wednesday at Connelley's Funeral Chapel. Burial will be in Magnola Cemetery.

Grice had been president of Limestone College at Gaffney, headmaster of Beaufort Academy and founder of the Charleston College Preparatory School.

Active for more than half a century in private and public education, Grice was president of the Southern University Conference and the S.C. Association of Colleges.

He helped develop the study of marine biology in South Carolina and was one of the founders of Bears Bluff Laboratories on Wadmalaw Island, where the late G. Robert Lunz initiated modern research into the state's marine resources. Grice later obtained a portion of the Fort Johnson federal quarantine station at Charleston for the College of Charleston.

The college began a marine science program at the station and named its biological labs in Grice's name.

He was a graduate of Clemson College and received his masters' at Columbia University. Clemson gave him an honorary doctorate in 1943.

Grice began his career in 1932 as a teacher at the High School of Charleston. Later he

became principal of Mitchell School, also in Charleston.

He joined the College of Charleston faculty in 1932, remaining through the Depression and World War II for a total of 44 years. After the war he was instrumental in persuading the school's trustees to revert the institutions to private status.

The school, established in the 1760's as a state institution although privately funded, became the Charleston municipal college in 1839. In 1949 it reverted to a private school until 1970, four years after Grice retired as president.

The college then became a state supported institution.

Grice, a Republican, was elected to the House in 1966, resigned the next year to seek election to the Senate and served there through 1968.

Gov. James B. Edwards issued a statement on Grice's death. "South Carolina has lost a great educator, an outstanding college president a colorful statesman and political leader, and I have lost a close friend. He will be surely missed," Edwards said. "My deepest personal sympathy goes out to his family."

Surviving are: a son, Dr. George D. Grice Jr. of Woods Hole, Mass.; a daughter, Marguerite G. Armas of Charleston; two sisters, Ruth R. Grice and Dorothy Grice, both of Charleston; a number of grandchildren.

[From the Charleston News & Courier, May 20, 1977]

A CONSERVATIVE AT REST

A constant champion of conservatism in politics and education, George D. Grice fought more than a fair share of losing battles in his lifetime.

He was the kind of man, though, to whom every loss was in a sense a victory. Those who agreed with him took courage from his efforts. Those who disagreed with him learned to respect him.

The crowning effort of his career was his attempt as President of the College of Charleston to run a small, prestigious institution which concentrated on intellectual attainment rather than what Dr. Grice was prone to call the "frills".

As he often was, he was defeated—not by lack of merit in his principles but by the compulsions of the times. Emerging from the wreckage of his hopes to keep the college "private" he carried his principles into politics. An interlude in which his kind of Republicanism found favor in the public eye helped him and he served a controversial term in the State Senate. When he eventually wore out his welcome, he returned to his first love, education, and built himself a whole, new, rewarding career.

Looking back on his disappointments, Dr. Grice once said he would shed no tears. Now that he is dead at the age of 76, his friends, who range across the spectrum of public and private life in Charleston, should temper sorrow at his passing with recollection of his lasting optimism. We propose a cheer for a man who fought a valiant, distinguished battle to preserve good old steady ways in an era when so many can conceive of no good except the kind that comes through change.

EPILEPSY: ANYONE CAN BE AFFLICTED AT ANY TIME

Mr. HASKELL. Mr. President, the variety of conditions collectively known as epilepsy is estimated to afflict at least 2 million Americans. Yet epilepsy remains a vastly misunderstood condition. Myths and misconceptions about this affliction abound. As a result, countless people who suffer from epilepsy face unthinking discrimination in employment and in society at large.

As many of my colleagues are aware, the National Commission for the Control of Epilepsy and Its Consequences, created in 1975 by an act of Congress, is now finishing its work. The Commission has conducted extensive regional hearings, involving hundrdes of individuals with epilepsy, done exhaustive research about the present services available to those who suffer from epilepsy, and most importantly, made far-reaching recommendations for changes to improve planning and services. I am certain my colleagues join me in eagerly awaiting the Commission's report, which is due by the end of July.

The Epilepsy Foundation of America is also working hard to change attitudes, to combat ignorance, and to confront social discrimination based on epilepsy. The foundation knows that educating the public at large about epilepsy can both help improve the quality of life for millions of Americans who suffer from this affliction as well as help to prevent epilepsy in the future.

An article by Michael P. Scott which appeared in the May 1977 issue of Better Homes and Gardens contains a great deal of very helpful information. Scott notes that five basic pieces of information about epilepsy "would greatly improve the understanding and even the prevention of epilepsy if only more Americans knew them."

Those basic facts are:

First. That anyone, at any time can be afflicted by epilepsy;

Second. Epilepsy is not one condition but many;

Third. Epilepsy is not a disease; it is a symptom of a brain disorder;

Fourth. Automobile accidents are a major cause of epilepsy; and

Fifth. That a majority of those afflicted are successfully treated.

Mr. Scott further points out vivid examples of the degree to which a great many people with epilepsy, with the aid of drugs, can lead totally normal lives. As with other forms of handicapping conditions, much of the problem lies with the stigma which the nonhandicapped public attaches to the condition. I believe Mr. Scott's excellent article, which is clear, concise, and straightforward, deserves the widest possible attention. I highly recommend it to my colleagues, and ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EPILEPSY: AN UPDATE ON TREATING BRAIN DISORDERS THAT CAN AFFLICT ANYONE—ANYTIME

(By Michael P. Scott)

There are five simple bits of information that would greatly improve the understanding and even the prevention of epilepsy if only more Americans knew them:

Anyone, at any time, can be afflicted by epilepsy.

Epilepsy is not one condition but many.

Epilepsy is not a disease; it's a symptom of a brain disorder.

Automobile accidents are a major cause of epilepsy.

A majority of those afflicted are successfully treated.

Just look at the Epilepsy Foundation of America's (EFA) 1977 poster child, Suzy Berge, above. According to her father, epilepsy means nothing more to a 12-year-old Suzy than taking three pills a day. Suzy's a trouper in the truest sense of the word. Her first seizure occurred only a short time before she was to appear in a gymnastics recital. With professional aplomb, she appeared and *then* went to see a doctor. Suzy symbolizes the hopeful side of epilepsy—the medical and drug control of severe seizure-producing disorders.

Unfortunately, there's a darker side of epilepsy. Some of its victims describe their lives as "living with a time bomb. You walk around knowing that any minute it might go off. You never know when or where, only that it will be at some particularly inappropriate time or place."

Epilepsy research is progressing at a rapid pace and although a cure remains elusive, effective treatment is readily available. But the attitudes most of us have about persons with epilepsy are slow to change.

Here, then, is a guide to these serious brain disorders that may afflict as many as 4 million Americans.

WHAT IS EPILEPSY?

Every breath you take, every blink of your eyes is controlled by electrochemical energy impulses from brain cells called *neurons*. Normally, these impulses "turn off" after obeying their specific command. When they don't turn off, the body reacts by twitching or jerking, and the person may lose consciousness. These erratic physical and mental activities are called seizures.

High temperature, infection, head injury, or alcohol or drug abuse can cause a single seizure in anyone. But when seizures happen repeatedly, a person is said to have epilepsy.

WHAT ARE THE MOST COMMON EPILEPSIES?

One of the most confusing aspects of epilepsy is the terminology used to describe it. In 1969 the International League Against Epilepsy reclassified the disorders.

Once the seizures were known only as grand mal (big sickness), petit mal (little sickness), psychomotor or temporal lobe, and focal. Today there are as many as 20 different seizure types, and the experts now refer to seizure-producing brain disorders as *"the epilepsies."*

Epileptic seizures may be classified according to the part of the brain they affect or, to some extent, to the victim's reactions.

Partial and generalized seizures are two broad categories that describe how extensive the erratic electrochemical brain discharges are.

Simple partial seizures are confined to only one part of the brain. Depending on which part of the brain is involved, the victim's hands or feet may tingle or jerk convulsively, or he may see a flashing light in his field of vision, or speak nonsense, feel dizzy, or experience unusual or unpleasant sounds, smells, or tastes. Usually he remains conscious.

Complex partial seizures manifest themselves in inappropriate actions. The victim may hear inexplicable noises or see things that are not there, appear to be in a dreamy state, remain motionless, or move automatically but purposelessly—repeatedly picking at his clothes, for instance.

Generalized convulsive seizures are the stereotyped epileptic seizure. In one kind—a tonic-clonic seizure (formerly grand mal)—the disturbed electrical impulses inviove the entire brain. As a seizure begins, the victim may utter a peculiar gutteral cry, then stiffen and lose consciousness. If standing, the victim will fall. His rigidity gives way to quivering and jerking, and may progress to wild thrashing movements. He may lose control of his bowels and bladder, foam at the mouth, and turn blue. The final stage of the attack is a deep stupor that may last for several minutes and is followed by a long period of deep sleep.

Generalized nonconvulsive seizures include the former petit mal, which is now called an *absence* seizure. It usually afflicts children under age 14 and is characterized by five- to 15-second lapses of consciousness. During the *absence* seizure, the child may appear to be in a dreamlike state, unaware of the momentary attack. Repeated eye blinking, about three blinks per second, is another characteristic. Some children are able to continue whatever activity they are engaged in during an *absence* attack—riding a bicycle for instance. Most children are completely unaware they are having an attack and continue with their activities after it is over. Because *absence* seizures are commonly mistaken for daydreaming, they often go undiagnosed.

Febrile, or fever, seizures affect youngsters under the age of three and are not necessarily epileptic seizures. As the name implies, the seizures are caused by high body temperatures that affect the youngsters' immature nervous systems. Only when a child continues to have seizures without fever after the age of three or four can he be diagnosed as having an epilepsy.

There are many seizure patterns: Some may start as partial and progress to generalized, and some persons with epilepsy may have more than one type of seizure. But usually, no pattern can be found to the events that bring on an epileptic seizure. A seizure can be precipitated by many causes including bright or flickering lights, sleep deprivation, loud music or a sudden noise, tension, fatigue, and hyperventilation (rapid, heavy breathing while at rest).

Some persons with epilepsy are able to predict the onset of a seizure. The warning sign, called an *aura*, may be a tingling sensation, a buzzing noise, or just a "funny feeling," in the head, stomach, or chest.

Usually seizures last only a few minutes, but in some cases they follow each other so closely that they appear to be continuous. This condition (status epilepticus) places a severe strain on the respiratory system and can eventually cause death if not stopped by emergency medical treatment.

WHAT CAUSES EPILEPSY?

There is no single answer. Among the causes are unusual birth trauma, drug or alcohol abuse, fever, infectious diseases, brain tumors, abscesses, and congenital brain malformations. In the elderly, poor blood circulation in the brain is often a cause. Anything that is potentially harmful to the brain is a potential cause of an epilepsy.

Most Americans ignore the increasingly significant role head injuries play in causing epilepsy. Although the 55-mile-per-hour speed limit has reduced the number of head injuries caused by automobile accidents, the EFA says 190,000 Americans still sustain seizure-producing head injuries each year from automobile accidents alone. These 190,000 will have one or more seizures within three years of the accident. Almost 50,000 will develop persistent seizures that tend to resist therapy. The Foundation recommends the use of protective headgear for motorcyclists, snowmobilers, and football and hockey players.

Heredity plays some role in the epilepsies, although it appears that what is inherited is not the condition itself but a tendency to be susceptible to seizures, or more vulnerable to the types of injury that produce epilepsy. Epilepsy is *not* contagious, and while it predominantly afflicts young people, it can afflict anyone, regardless of age.

HOW ARE SEIZURES DIAGNOSED?

The electroencephalograph (EEG), a machine that records the brain's electrical activity, is a major diagnostic tool. EEG tracings help scientists learn where an epileptic discharge begins, where it spreads, its intensity, duration, and time of occurrence.

Variations on the EEG—remote control and portable devices that permit 24-hour EEG tracings to be recorded—are also being used. Computerized axial tomographic scanners (CAT scanners) employ sophisticated X-ray techniques to make detailed images of the interior of the brain. The effectiveness of the CAT scanner is still being studied, but researchers hope it will help them pinpoint brain damage that causes seizures.

Video monitoring is a technique in use at the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS) and other major epilepsy research centers. Three television cameras transmit pictures of the epileptic patient's face, his entire body, and his EEG tracing. The three images are projected on a television screen (using a "split-screen" technique) and recorded. When the recording is played back, scientists are able to see facial and bodily reactions accompanying an epileptic seizure along with the EEG tracing. Video monitoring helped refine the classification of seizures and also uncovered some misdiagnosed epilepsies that were later correctly treated.

Teachers often are the first to detect *absence* seizures in children because parents often misinterpret the seizures as daydreaming.

HOW IS EPILEPSY TREATED?

Drug therapy is the most common and effective treatment for epilepsy. The reclassification of seizures has made it easier for physicians to treat specific seizure disorders with specific drugs or drug combinations. About 80 percent of the seizure disorders can be wholly or partially controlled by drug therapy.

Most seizures are kept under control by using one or more of 15 commonly prescribed anti-convulsant medications. Two very common drugs in use today are *phenobarbital* and *phenytoin* (commonly prescribed under its trade name, Dilantin). Two drugs recently approved for use in epilepsy—*carbamazepine* (Tegretol) and *clonazepam* (Clonopin)—are being used with success for patients who were not able to tolerate or who did not respond to other drug therapies.

Determining the "ideal" drug therapy (one that stops the seizures with minimum side effects) requires careful analysis of the amount of the various drugs in the patient's blood. To do this, physicans use highly sophisticated laboratory procedures, such as *Gas-Liquid Chromatography* (*GLC*), which measures even minute amounts of drugs in the bloodstream. The Epilepsy Foundation has promoted the use of GLC testing in hospitals across the country and supports the training of technicians to operate the complex equipment. A newer testing method called *EMIT* measures drug concentrations in saliva.

The sophisticated testing devices have revealed a surprising and perhaps tragic fact: Some persons whose epilepsy could be controlled by drugs do not always take their seizure-controlling medications regularly. Some are simply forgetful, others try to lower drug costs by taking less medication or taking it only when they sense an impending seizure. To effectively treat epilepsy, drugs must be taken exactly as prescribed by the patient's doctor.

Because the cost of anti-convulsant drugs is prohibitive for many people, the EFA has begun a nationwide low-cost prescription service. It is expected that the service could save persons with epilepsy millions of dollars a year in drug costs. (Details on the service are available from any EFA local chapter or from the Foundation's headquarters, 1828 L Street, N.W., Washington, D.C. 20036).

Surgery is sometimes used as a treatment where the epilepsy is caused by a brain lesion that can be reached and removed without impairing other brain functions.

WHAT IS BEING DONE TO PREVENT EPILEPSY

The 55-mile-per-hour speed limit has proved to be the single most effective preventive for new cases of epilepsy because it has reduced the number of head trauma injuries resulting from automobile accidents.

NINCDS is sponsoring research into the effectiveness of anti-convulsant drugs at centers across the United States; a screening project under NINCDS sponsorship is providing continuing analysis of the anti-convulsant properties of new chemical compounds; the Epilepsy Foundation is sponsoring a quality control program to assess the uniformity and accuracy of the various laboratory procedures used to determine drug levels in the bloodstream; and NINCDS is collecting data on 50,000 mothers and their children to determine the histories of many neurologic disorders, including epilepsy. The study has already shown that children who experience complex or abnormally long febrile seizures are more likely to develop a subsequent epilepsy.

The national Commission for the Control of Epilepsy and Its Consequences will present the results of its yearlong study this July. The report is expected to cover not only the status of epilepsy but how society is dealing with it.

WHAT ARE THE SOCIAL CONSEQUENCES OF EPILEPSY?

In the past, persons with epilepsy have been discriminated against by employers, insurance companies, schools, driver's license agencies—even by county officials who issue marriage licenses.

Today, the situation is improving. Many states now permit the person with epilepsy to obtain a driver's license provided he has a doctor's certificate stating that he has been seizure-free for a period of time, usually one or two years.

The Epilepsy Foundation has formed a national group life insurance plan that provides up to $25,000 coverage for persons with epilepsy and their families.

There still are some state laws that cry out for change. Among these are laws that permit parents to "give back" an adopted child who is found to have epilepsy, require physicians to report patients with epilepsy to state agencies, and allow the involuntary sterilization of persons with epilepsy.

The Epilepsy Foundation is working closely with self-help groups across the country as they deal with local bar associations and legislatures in an attempt to change discriminatory laws.

Of all the myths about epilepsy, the most damaging is the one that equates it with mental retardation. The fact is that persons with epilepsy are of at least normal intelligence unless their seizures are caused by a brain injury which in itself impairs intelligence.

Behavioral disturbances are more common in persons with epilepsy than in the general population, but EFA says that fact shouldn't come as a surprise. We'd all develop personality problems if we were continually shunned, shut out of the job market, or prevented—by law or custom—from doing as others do.

Finding a job—and then keeping it—is a major problem for many persons with epilepsy. As many as 25 percent of those whose seizures are controlled by drugs are estimated to be chronically unemployed.

The EFA has begun a placement service for young persons with epilepsy in five major cities. TAPS (training and placement service) hopes to break the cycle of application and rejection that plagues young persons with epilepsy who are seeking first time employment.

The military still excludes persons with epilepsy, mostly because they may be beyond the reach of medical attention rather than because of the condition itself.

A Los Angeles nonprofit corporation, Epi-Hab, specializes in on-the-job training, employment counseling, placement, and technical instruction for persons with epilepsy. Epi-Hab's director, Dr. Frank Risch, says productivity in the corporation's workshops often exceeds that of competing firms. Seizures and accidents have not affected the company's workmen's compensation insurance rates. (Epi-Hab's are also located in Phoenix, Arizona, and Evansville, Indiana.)

The biggest hurdle a person with epilepsy faces when seeking employment is the prospective employer's misconceptions. Many employers think that persons with epilepsy will disrupt the normal office or plant routine.

In fact, those persons with drug-controlled epilepsy have better safety, production, and attendance records than their fellow workers.

Federal legislation now prevents employers who do business with the government or who accept federal grants from refusing to hire qualified persons with epilepsy purely on the basis of their illness.

With only a few restrictions, persons with epilepsy can lead normal lives. The American Medical Association recently agreed with the Epilepsy Foundation that youngsters with epilepsy should not necessarily be barred from contact sports. Specialists emphasize that where possible, children should not be over-protected but should be allowed, instead, a normal childhood. As one British spokesman put it: "If a child with epilepsy wants to climb a tree, he should climb that tree. Which is worse—a broken leg or a broken heart?"

FIRST AID FOR A MAJOR SEIZURE

Here are some things you can do if someone you know has a major epileptic seizure.

BEFORE THE SEIZURE

Help him lie down.

Remove his glasses and/or false teeth.

Loosen tight clothing.

Place a pillow or coat under his head.

DURING THE SEIZURE

Do not force anything into his mouth.

Do not restrain his movements.

Move any hard or sharp objects out of the way.

Stay with him and observe his activities.

AFTER THE SEIZURE

Turn the person on his side to allow saliva to drain out of his mouth.

Do not give him anything to drink until he is fully awake.

WHEN TO CALL FOR EMERGENCY HELP

If the person does not start breathing after the seizure.

If the person has one seizure after another.

If the person injures himself.

SOME THINGS TO REMEMBER

You cannot stop a seizure once it has begun.

It is not necessary to restrain someone having a seizure.

Most persons suffering from a seizure have difficulty breathing.

Unconsciousness may continue as long as 15 minutes.

The person may awake confused and sleepy.

IDI AMIN

Mr. THURMOND. Mr. President, on Saturday, May 28, an editorial appeared in the Columbia Record which I feel compelled to call to the attention of my colleagues. Much has been written and said about the barbarous regime of Idi Amin in Uganda, but there have been few positive proposals about how to deal with it. Here, in the cogent and forceful style which is characteristic of the Record, is such a proposal.

The documented atrocities of Amin are sufficient to establish him as one of contemporary history's most unbalanced and villainous characters. Tragically, the sins of which we have knowledge are probably insignificant compared with those of which we do not. Yet there seems to be a certain timidity on the part of some international organizations to condemn him. This is a classic case of the double standard.

When will the world learn that the color of a man's skin, or the circumstances of his birth, or the country of his residence has nothing to do with his moral character? I thought that this was the fundamental premise of civil rights. It is not only inconsistent, it is patronizing to wink at flagrant crimes because they are committed by a man whose people have had flagrant crimes committed against them.

Those who judge international affairs should be color-blind. Apparently, many of those who are judging the Amin reign of terror—or rather, not judging it—are blind, period.

Mr. President, I ask unanimous consent that the editorial to which I have alluded be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

BUTCHER OF KAMPALA

The weightiest condemnation to date of President Idi Amin of Uganda as a mass murderer emanates from the International Commission of Jurists. Their report quotes two of Amin's former ministers as saying that between 80,000 and 90,000 people were murdered in Uganda during Amin's first two years in power.

Killings, brutal and barbarous, still proceed with regularity. The butcher of Kampala is not disturbed. He proceeds about his bloody business, unperturbed by the question of the Jurists: what can be done about Amin?

To save African lives, one deed could be accomplished. Roman Catholic and Anglican churches, banks, business firms, and the British and American governments could insist that—as a moral duty—their nationals depart immediately.

While black African leaders condemn Amin privately, they won't point a finger at him publicly because of the "black brotherhood" against two white minority regimes, Rhodesia and South Africa. While black Africans' feelings are understandable, they are dead wrong. The Organization of African Unity can no longer engage in private condemnation, but must go public.

As for other organizations. The Times of London comments astutely: "The UN Human Rights Commission is quite active in respect of South Africa, Chile and some other countries which its membership agree are inhumanely oppressive regimes. For the Human Rights Commission to live up to its title for a strong resolution, white men have to torment and debase black men or right-wing secret police have to maltreat liberals or leftists: no other abrogation of human rights seems to produce any protest.

"In short, the Human Rights Commission has little or nothing to do with rights, justice or human conscience. It is, or has become, a political and propaganda body. It makes a mockery of human rights, as solemnly written into international conventions."

And if human rights is to be a cornerstone of the Carter administration's foreign policy, then it is high time for President Carter, Secretary Vance or Ambassador Young to speak out—forcefully—about Amin.

BISHOP WALSH'S GOLDEN ANNIVERSARY

Mr. MATHIAS. Mr. President, 2 weeks ago Bishop James E. Walsh, a native of Cumberland, Md., celebrated his 50th anniversary as a bishop. That is a remarkable accomplishment, but then Bishop Walsh is a very remarkable man.

We rejoice that Bishop Walsh is among us and that he was able to celebrate this significant occasion in his own country among friends and family. As most of my colleagues will remember, Bishop Walsh spent many years in prison in the People's Republic of China. His release from prison in 1970 brought to an end an ordeal which he sustained with great heroism.

The Cumberland News on May 20 carried an article on the observances honoring Bishop Walsh's anniversary, entitled "Bishop Walsh Marks 50th Anniversary as a Bishop." I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BISHOP WALSH TO MARK 50TH ANNIVERSARY AS A BISHOP

Bishop James E. Walsh, a native of Cumberland who spent many years as a Maryknoll missionary to China, will observe his 50th anniversary as a Bishop this weekend at Maryknoll, N.Y., headquarters of the order.

Bishop Walsh, who is 86 and reported still in good health, will ordain seven men to the priesthood in ceremonies tomorrow at Maryknoll.

On Sunday at 10 a.m., Bishop Walsh will celebrate a mass for his family to mark his golden anniversary as a Bishop. Planning to attend are his four sisters, Mrs. Julia S. Werner and Miss Mary Walsh, both of Cumberland, and Sister Joseph and Sister Rosalia, both of the Baltimore area.

Two local nephews, William Walsh and his wife and five children, and Francis L. Werner, also plan to attend the ceremonies both days.

Bishop Walsh has been retired at Maryknoll since 1970 after he was released from China, where he was held prisoner for many years.

He was elevated to Bishop while on Sancion Island in South China, and ceremonies this weekend will be highlighted by the attendance of several priests who were present at the ceremony 50 years ago.

They are Father Robert E. Sheridan, Father Robert Kennelly, Father Joseph McGinn, Father Edward Mueth and Father Constantine Burns. Several nuns who were missionaries in China and were present at the event 50 years ago also will attend.

Bishop Walsh first went to the Orient as a missionary in 1918. In 1936 he became superior general of the Maryknoll Order, and he returned to the United States just prior to the start of World War II in 1941.

He returned to China in 1948 for the last time, and spent many years as a prisoner there before being released in 1970.

A spokesman at Maryknoll said Bishop Walsh is a "delight to have here." He added that his health is good, his mind is sharp and he looks to the future rather than dwelling in the past.

The spokesman said Bishop Walsh also enjoys taking walks, a practice he had to forgo during the winter months.

Bishop Walsh also has three brothers and a sister who are deceased. They are William C. Walsh, William Edward Walsh, Rev. John Walsh, also a Maryknoll Missionary, and Miss Margaret Walsh.

"FLEMING'S NOTEBOOK" CLOSES

Mr. THURMOND. Mr. President, one of the most distinguished citizens in the State of South Carolina—and to my great good fortune, one of my closest friends—is Mr. Fleming Mason.

Mr. Mason has had a long career of public service, filled with achievements of astonishing variety. It is in the field of law enforcement, however, that he has won the widest renown.

Mr. Mason is a former officer of the State highway patrol—chief—and the Federal Bureau of Investigation. During his years with these agencies, he not only acquired a wealth of knowledge and expertise in police work, but a rare facility in communicating them to his fellow officers, particularly the younger ones. Thus, he was a natural choice to be producer of an ambitious series of monthly programs on law enforcement launched by South Carolina Educational TV in 1965.

This series, called "From Crime to Court," is still going strong, with 140 programs completed and aired. The programs are used to keep South Carolina law enforcement personnel up to date on the latest developments of a legal and judicial nature in their profession. Knowledgeable observers have hailed the series as an exemplary use of television for continuing education.

Present at the creation, Mr. Mason has remained producer of the programs until this month. He has also taken it upon himself to augment the broadcasts with printed notes, distributed widely and regularly throughout the State. These notes, compiled over the years, provide an invaluable archive to which officers can turn—and constantly do turn, veteran and rookie alike—when confronted with some particularly difficult problem.

Now, after 47 years of hard and productive labor, Mr. Mason is retiring. Retiring is not quite the right word, for an active, creative man like Fleming Mason does not know how to stop achieving. He is, however, stepping down as producer of "From Crime to Court." As of June 30, the series will have to get along without its resident genius and guiding light.

The other capable members of the production staff will, of course, be able to carry on. There is no question, however, that the Mason touch, and the Mason personality, will be sorely missed.

In recognition of ETV's impending loss, ETV will present a special program on Thursday of this week—June 10—consisting of excerpts from old "From Crime to Court" programs and reminiscences by Mr. Mason on his experiences with the series. This is an exceptional tribute, but no less exceptional than the man to whom it is being paid.

In addition, an article appeared in the June Guide to South Carolina Educational Television discussing Mr. Mason's career and wishing him well in the future.

Mr. President, it goes without saying that I share this wish for my good friend. Nevertheless, I would like the record to reflect the extent of my admiration and regard for him. Congratulations, Fleming, on a superb job. You have earned the lasting gratitude of your profession and your State.

Mr. President, to supplement the information I have presented here, I ask unanimous consent that the article in the ETV guide, to which I previously made reference, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

"FLEMING'S NOTEBOOK" CLOSES: ETV LAW ENFORCEMENT PRODUCER RETIRES

In December 1965, S. C. ETV and the S.C. Law Enforcement Division (SLED) began a unique project which was to become one of the State's most important law enforcement tools. The project was "From Crime to Court," a closed-circuit series aimed at keeping South Carolina's law enforcement professionals abreast of the latest development in their field. Shepherded by ETV's Fleming Mason, the series has proved its worth through 12 years and almost 140 programs.

On June 30, "From Crime to Court" marks the end of an era. The series will go on, but its long-experienced and able producer, Fleming Mason, will be stepping down.

"After forty-seven years of work," says the former FBI agent, member of the Highway Patrol and school teacher, "it's time for a rest." And since 1965, the ETV series has indeed kept Mason busy. Working with S. C. Deputy Attorney General J. C. Coleman, who serves as a general consultant for the series, each month's topics are researched; scripts are prepared; arrangements for program guests are made. The programs focus on recent court decisions and legislation that affect law enforcement in the state. Following a film dramatization of a typical situation in which an officer might find himself, Mason, Coleman and their guest of the month (a member of the judiciary) discuss the legal implications of the situation.

The series' value to law enforcement personnel has proved inestimable. "Once a rookie has received his training at the police academy," Mason explains, "generally he receives no other formal training. SLED sponsors short courses in basic and advanced fields at the Academy in Columbia, but it is inconvenient and expensive for officers living outside the state capital to take advantage of this training."

"We can only take care of 35 recruits at the Police Academy during each training period," noted SLED Chief J. P. Strom, "and that is not nearly enough." By contrast, "From Crime to Court" reaches approximately 3,500 a month. In the process of keeping officers up-to-date, the series has been credited with making them better officers, guiding small towns toward the establishment of a model police force, and avoiding possible court suits.

Each month's program is broadcast three times in the month to tech centers and schools across the state, where police officers, magistrates and other law enforcement personnel gather to continue their professional training. For each group there is an instructor, who has met previously to view the program with Mason in Columbia. In support of the program, Mason prepares a booklet each month, restating the legal information conveyed on the air. Affectionately known as "Fleming's Notebook," these booklets are mailed to magistrates, police officers and members of the judiciary—at a rate of approximately 9,000 per month. They become a ready-reference tool, kept on file and well-used by recipients.

A native of Clinton, S.C., Mason is a graduate of Presbyterian College. He and his wife Thomasine—a Federal Administrative Law Judge for HEW assigned to Columbia and a former state senator—maintain a dual residence in Columbia and Summerton, S.C.

What are his plans for retirement? "To sleep late and enjoy life—my avocation is people, and I plan to make the most of it." Certainly after his years of hard work and service to the state, Mason deserves his enjoyment. ETV wishes him well.

(This concludes additional statements submitted today.)

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CLEAN AIR AMENDMENTS OF 1977

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 252, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 252) to amend the Clean Air Act, as amended.

The Senate resumed consideration of the bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Virginia (Mr. SCOTT) is recognized to call up an amendment.

AMENDMENT NO. 378

Mr. SCOTT. Mr. President, I call up my amendment numbered 378 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Virginia (Mr. SCOTT) proposes amendment numbered 378.

Mr. SCOTT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with and that it be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 1, after line 2, insert the following:

"SECTION 1. Section 101(b)(1) of the Clean Air Act is amended to read as follows:

"'(1) to protect and enhance the quality of the Nation's air resources by establishing, achieving, and maintaining national ambient air quality standards, standards of performance for new stationary sources, and national emission standards for hazardous air pollutants so as to promote the public health and welfare and the productive capacity of the Nation, but nothing in this Act is intended to require or provide for the establishment of Federal standards more stringent than primary and secondary ambient air quality standards;".

On page 1, line 3, strike out "SECTION 1" and insert "SEC. 2".

On page 2, line 18, strike out "2" and insert "3".

On page 2, line 21, strike out ", prevention of significant deterioration,".

On page 4, line 3, strike out "3" and insert "4".

On page 5, line 5, strike out "4" and insert "5".

On page 9, beginning with line 14, strike out all through "(b)" in line 1 on page 10 and insert in lieu thereof "SEC. 6. (a)".

On page 10, line 16, strike out "(c)" and insert in lieu thereof "(b)".

On page 10, beginning with line 24, strike out all through "(iii)" in line 25 and insert in lieu thereof "and (ii)".

On page 10, line 25, strike out "(d)" and insert in lieu thereof "(c)".

On page 11, line 2, strike out all following the quotation marks through the semicolon in line 3.

On page 11, line 6, strike out "(e)" and insert in lieu thereof "(d)".

On page 11, line 9, strike out all after "section 111" to the comma in line 11.

On page 11, beginning with line 12, strike out all through line 14.

On page 11, line 15, strike out "(g)" and insert in lieu thereof "(e)".

On page 11, beginning with line 24, strike out all through line 16 on page 22.

Mr. SCOTT. Mr. President, I ask unanimous consent that a member of my staff, James Roberts, be accorded the privilege of the floor.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of my amendment: Senators BARTLETT, EASTLAND, HELMS, THURMOND, and TOWER.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, a copy of the amendment, of course, is on the desk of each Senator, as is a copy of a "Dear Colleague" letter that has been on the desk for the past 24 hours.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JUNE 9, 1977.

NON-DEGRADATION AMENDMENT TO S. 252

DEAR COLLEAGUE: My amendment to the Clean Air bill would retain the right of the Environmental Protection Agency to regulate air quality for the nation as a whole but would authorize states and localities to determine whether the air quality standards above those established nationally should be required to meet special conditions within a given area. A copy of the amendment should be on your desk.

In all probability there are areas throughout the country essentially rural in natural where the air quality is far higher than the primary and secondary standards established by the Environmental Protection Agency to protect the health and welfare of citizens generally. These areas may well be suitable for construction of business or industrial establishments necessary to promote our economic growth and to retain our present standard of living.

One county in Virginia, for example, has a population less than it had a century ago and the principal industry today is tree farming. This county is not many miles from the state capital and might well be a reasonable site for a business or industrial facility that would provide employment and still have air quality considerably above national standards. Where such a situation exists it would seem rasonable to permit the determination of land use to be made by the state and local government rather than by the Environmental Protection Agency.

No one would quarrel with the concept of a clean and wholesome environment but reason dictates that this be coupled with the ability of an industrial nation to continue to develop its economic capacity in the general public interest and both Federal and state governments should share in this process. Therefore, I hope you will examine and support my amendment.

Sincerely,

WILLIAM L. SCOTT, U.S.S.

Mr. SCOTT. Mr. President, this bill is a long and complex measure. The bill itself consists of 130 pages. It has a report containing 233 pages.

Yet my amendment relating to nondegradation is familiar to all of the members of the committee and I believe to most Members of the Senate.

The bill insofar as it relates to nondegradation is substantially the same as the measure that we had before us last year.

When Congress enacted the Clean Air Act some years ago, I believe it was intended to deal with air pollution problems on the Federal level. The act authorized the Administrator of the Environmental Protection Agency to set national standards and contemplated that States would develop programs to reduce pollution to the levels required by these national standards. However, in a 4-to-4 decision in the case of Sierra Club against Ruckelshaus, the Supreme Court left standing a decision of the Circuit Court of Appeals for the District of Columbia which held that the act prevented significant deterioration in the quality of clean air even though the air quality was still higher than that required by Federal standards. The present bill before us would provide a statutory basis for the court decision and this is what my amendment is addressed to.

No one can quarrel with the concept that we need a clean and wholesome environment. Since our air is ambient, since it travels almost continuously from place to place, and does not stop at any State line, it appears reasonable for the Federal Government to require that the quality be high enough to protect the health and welfare of the people of the country. The Administrator of the Environmental Protection Agency has established primary and secondary standards to meet that need. I am concerned, however, about States and localities retaining the right to make decisions with regard to land use, the construction of homes, of shopping centers, of commercial and industrial complexes rather than to have those decisions determined by someone in Washington who may not be familiar with the local situation. It seems reasonable to me that the Federal Government should not make decisions of an essentially local nature with regard to air quality or act to prevent the construction of any facility so long as the standards established nationally to protect the health and welfare of citizens are met.

My secretary told me that in these prepared remarks that I had used this phrase "protect the health and welfare of citizens" on several occasions. I do that because that is the language that is used in the Clean Air Act and the Administrator does have the authority to raise these standards, lower them, to adjust them in any manner that he sees fit if situations change so that we will be protecting the health and welfare of the people throughout our Nation.

State and local officials, however, should be permitted to make decisions concerning localities and to establish higher standards when in their opinion this is necessary. I believe they are much better qualified to do so than for us in Congress to attempt to delegate the authority to make decisions affecting localities everywhere in the Nation. In my opinion, the nondegradation, or no substantial deterioration concept establishes a no-growth policy that could further retard economic development.

An editorial in this month's issue of Nation's Business stated that the United States produces 32 percent of the world's gross product, although we only have 6 percent of the population of the world. The economic strength and industrial power of this Nation has made possible the standard of living we enjoy and I doubt that Members of the Senate want to reduce the standard of living. Yet, under our economic system that we enjoy, the economy must continue to grow and to expand or it will stagnate. We have to have new buildings, new industries, and expansion of existing ones. A no-growth policy, in my judgment, means economic recession and unemployment. I do not believe the Senate wants to stunt the economic growth of the country. This amendment recognizes the need to protect and enhance the quality of the Nation's air resources. It recognizes the need to have national air quality standards; to protect the public health and welfare, but my amendment adds the phrase, "nothing in this act is intended to require or provide for the establishment of Federal standards more stringent than primary and secondary ambient air quality standards."

American citizens and people generally are pretty much the same. We all have a set of lungs operating in much the same fashion. All of us need a clean and wholesome environment. The Administrator of the Environmental Protection Agency will still retain the right to set standards high enough and to change them when necessary to protect the public health and welfare of the people of the country, but States and localities will have the right and the duty to determine whether air quality standards above those set for the Nation as a whole should be established and maintained. Planning and zoning has traditionally been a function of State and local government. In my opinion, the determination as to whether a business or industrial complex should be established should remain under the control of the State and local governments so long as it does not interefere with the air quality standards set for the Nation as a whole.

There are many rural areas of our Nation where there is little business or industry. Farming, forestry, and generally nonpolluting activities are still carried on in large areas of the United States. Yet, the people of those localities should have the right to say whether they want a factory to be constructed, rather than have the decision made for them by an unelected Federal official in Washington.

Mr. President, when we were considering the clean air amendments last year,

the Wall Street Journal wrote an editorial comparing the effect of nondegradation to the weight of an individual. The editorial states:

Imagine that Congress passes a law, and an appropriate agency issues a regulation, that prohibits adult male Americans from weighing more than 200 lbs., on the grounds that excessive weight is both unhealthy and unattractive.

Then imagine the little people's lobby wins a Federal court ruling that even skinny teenagers weighing 120 lbs. aren't allowed to add any significant weight, on the grounds that this is what Congress seemed to have intended when it passed the law.

Imagine further the outrage of those who think the court ruling to be nonsense—because it bears no relation to either health or attractiveness, and in error—because Congress didn't intend to starve skinny teenagers when it passed the legislation.

Mr. President, quotation of a portion of the July 26, 1976, editorial seems to illustrate the point I have been trying to make. The rural areas of our Nation need to continue to grow, to become industrialized if they want to, to provide additional employment for their people if this is needed, and so long as the Nation as a whole is not harmed by the actions taken by the States and localities it would seem reasonable for the decisions to be made at the local level. This is in accord with the Federal concept of government, the concept of dual sovereignty established by our forefathers.

We live in a nation that is diverse, a nation with people of various backgrounds, a nation that has both urban and rural areas, vast national resources—a nation where individual initiative is encouraged, and an industrial giant has developed that produces 32 percent of the world's gross product. It seems unreasonable to throttle that growth by a nondegradation policy.

If my amendment is adopted, the national standards will be retained but localities can determine whether the skinny teenager will be permitted to grow to adulthood, whether the economic growth of our rural areas will be permitted, whether there will be economic expansion rather than stagnation. I do not believe there is anything complex about this proposal. National standards of air quality would continue to be made at the Federal level, but so long as those National standards are met States and localities could determine for themselves whether or not they wanted to expand their economies.

Mr. President, I believe that any further statement on my part would only tend to cloud the issue. This is not a new subject. I have copies of various letters and various editorials that have been inserted in the RECORD in the past, and I do not wish to clutter the RECORD by reinserting them. I do ask that each Senator examine the amendment. I hope Senators can support it.

The entire purpose is to retain the ability of our industrial Nation to continue to develop its economic capacity in the general public interest, while retaining a clean and wholesome environment.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER (Mr. HASKELL). Is there a sufficient second? There is not a sufficient second.

Mr. SCOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, the amendment of the distinguished Senator from Virginia, I believe, is the same as the amendment that he offered last year, essentially.

Mr. SCOTT. It is substantially the same; the Senator is correct.

Mr. MUSKIE. If I may characterize it, and I think the Senator himself has done so, what it does is establish the Federal primary and secondary ambient air quality standards in clean air areas as a substitute for the nondegradation provisions of the committee bill.

In other words, there is the assumption in the Scott amendment that the primary and secondary standards applying to the dirty air areas of the country are sufficient for the clean air areas of the country.

Why is that not so? First of all, may I say to the Senator and to the Senate, we do not regard those standards as adequate in the committee, for reasons that I will try to outline.

In the first place, the national primary and secondary standards were set for dirty air areas as the minimum necessary and the minimum reasonably attainable in the dirty air areas, in order to put them up to minimal health standards. They are not ultimate; they are not maximum; they are minimal. And, if I may highlight this, testimony on the health question over the last 7 years over and over again has made the point that there is no such thing as a threshold for health effects. Even at the national primary standard level, which is the health standard, there are health effects that are not protected against.

Long-term, low-level exposure to pollutants produce health effects which are not guarded against by national primary standards. We would have to get down to zero pollution in order to eliminate all health effects. At any level between zero pollution and the pollution permitted by national primary standards, there are health effects.

Let us not disabuse ourselves on that score. Unless we bear that in mind, if we set national primary standards as the nationwide standards in clean air areas, we are saying that in clean air areas we are deliberately willing to throw that health protection away.

What we are saying in the committee bill is, "Let us not throw it away at the beginning of the game, but let us, in a rational way, approach the question of how much of the air quality values of the clean air areas of the country we give away."

So even on the health question, national primary standards, in my judgment, coming from a State which is reasonably clean, are not the standards I am willing to accept as the ultimate protection for health in the clean air areas of my State.

Mr. SCOTT. Will the Senator yield at that point?

Mr. MUSKIE. I am happy to yield.

Mr. SCOTT. The Senator, of course, is the chairman of the subcommittee and is very familiar with this bill. I would ask if the word "minimal" appears anywhere in the statute. He refers to minmal health standards. It is my understanding, and I would ask to be corrected if I am mistaken on this——

Mr. MUSKIE. The Senator is correct, but I believe it is appropriate for me to describe how we arrived at the health standard in the bill.

Mr. SCOTT. Certainly. But I would ask if the Administrator of the Environmental Protection Agency, even if my amendment should be adopted, is not still authorized to set primary and secondary standards which are necessary to protect the health and welfare of the people of the country? The word "minimal," I submit, is misleading. He can raise the standards or lower them.

Mr. MUSKIE. It is because the word "minimal" is a very difficult one to define that we did not put it into the statute, may I say to the Senator. Does the Senator believe that a Senator ought to close his eyes to the fact, supported by pages upon pages of testimony before the committee, that below those health standards there are still health effects, and serious health effects, for many people?

The Senator may choose to close his eyes, but I cannot close my eyes.

The second point I make in response to the Senator is if the Congress were to adopt the Senator's amendment and, in effect, say to the Administrator in the judgment of the Congress the national primary standards arrived at, as I have described, are sufficient for the clean air areas of the country, what possible basis, politically or otherwise, could he use to justify a stiffening of the primary standards in the nonattainment areas of the country which are already struggling in order to achieve a balance between their needs for growth and their citizens' needs for health?

Once we say to him, "The primary standards now established are sufficient for the clean air areas of the country," which could do better, then what possible justification could he use that he could expect the Congress to support to impose stiffer standards?

Mr. SCOTT. Mr. President, if the Senator will yield further—my amendment does not in any way affect the action of the Administrator of the Environmental Protection Agency insofar as national standards are concerned, standards which would apply throughout the country. The amendment says that nothing in the act is intended to require or provide for the establishment of Federal standards more stringent than primary and secondary ambient air quality.

Mr. MUSKIE. Have I described the Senator's amendment in any other way than the language of his own amendment?

Mr. SCOTT. In the event the Administrator feels it is necessary to require higher standards, if circumstances changed, he would still have the authority to change the standards insofar as they apply on a nationwide basis.

Mr. MUSKIE. May I say to the Senator that the constraints on the Administrator which resulted in the present primary standards still exist. The necessity for balancing health requirements against the need for growth still exists. If more stringent standards are applied by the Administrator, they will apply to the dirty air areas and the clean air areas alike, under the Senator's amendment. So the constraint still exists.

If the Congress has said to him in the meantime that the present primary standards are good enough in the clean air areas, which are in a better position than the dirty air areas to do better, I submit to the Senator the Administrator is not likely to do anything more than to try to continue to protect what he has already done, the standards as they exist. That is the way I would react if I were the Administrator.

Mr. SCOTT. Will the Senator yield?

Mr. MUSKIE. I yield.

Mr. SCOTT. I am thinking about an area such as we have in King and Queen County, Va., an area where the principal industry, I believe, is tree farming. I suppose there must be thousands of counties throughout our country where they have no major industry. Suppose the people of these areas would want to construct a factory, and they would construct a factory which would have a degree of pollution. Yet the factory, if established, would not interfere with maintaining the Federal standards.

Should not the people of the locality be permitted to determine whether or not they want a factory?

Mr. MUSKIE. If the Senator will yield, if he will let me complete my opening statement, he will find that I am going to touch upon that very question. The Senator wanted to interrupt me for the purpose of examining the health question, and I am perfectly happy to do that.

When I finish the next point, I will be happy to yield to him at that time. I believe it would be helpful if I could lay out my exposition in the way I started. With respect to the health question I believe I have covered the point.

The second point I would make is the assumption of the Senator's amendment is that there are no air quality values other than those protected by national primary and secondary standards which need protection; that if we can achieve those across the country, and if we set them as national standards, that would be the maximum. The Congress would be saying to the country, "That is good enough for every square inch of this country for the future." So if the country as a whole, in increasing its industrial and productive activity, its polluting activity, moves up to the national primary and secondary standards, that is a good enough quality of air in every square inch of this country for the indefinite future.

I submit if there was some way of exposing all 220 million people of this country to an urban area of this country which barely hovers at the national primary and secondary air quality level, the people of this country would overwhelmingly reject it as a standard sufficient for them.

Why do we need something better than the national health and national welfare standards as embodied in the primary and secondary standards?

Mr. President, secondary standards were envisioned as a goal for the cleanup of dirty air areas. They were intended to identify the degree to which pollution needed to be reduced to stop damage to crops, to household plants, to buildings, and general aesthetic deterioration.

Secondary standards as promulgated did not address ecological and aesthetic values.

EPA apparently assumed that if secondary standards had been established to protect these values, their achievement in dirty air areas would have been virtually impossible in any reasonable time frame.

So those values in dirty air areas are not protected by secondary standards.

The nondegradation provision is intended to provide protection against harmful environmental effects not anticipated by secondary standards and to assure that a single, new major emitting facility will not consume the entire regional air resource, thus barring any future growth.

For example, if the secondary standards were the only restraint on new sources of clean air areas, visibility, which is now 100 miles or more—and that is a valuable resource in some of our Western States—100 miles or more in some areas could deteriorate to 12 miles.

If humidity happens to be high, visibility would be reduced even further.

Now, while visibility may not be important in dirty air areas because it has been absent for so long that people do not remember what it was like, it does have high public value in many clean air regions, particularly in the national park areas, and should have been protected by secondary standards, but is not.

Another example of the inadequacy of secondary standards is the increasing number of studies indicating that pollutants were transported for much greater distances than previously thought.

This means that emissions from sources in rural areas contribute to urban problems, and vice versa.

In its report to the Senate Public Works Committee in March 1975, the National Academy of Sciences expressed concern that emissions as far away as 300 miles could contribute to unhealthy air in major cities.

Sulfur oxides, Mr. President, increasingly are returning to the ground in the form of acid rain which damages valuable water and soil resources.

Great Britain, for example, has used tall stacks to lift pollution above the level of the people in the immediate vicinity. What is now beginning to appear is the transport of those pollutants to the Scandinavian peninsula with the production of acid rain and other pollutants which are damaging the air qualities and the potential growth in that peninsula.

The same thing is happening in this country. Acid rain is being generated in the industrial areas of the country and being transported to the wild natural areas of northern Maine. This is happening in northern Vermont, in New England. It is happening elsewhere.

We are learning that polluted air is not a local matter. It is generated in one place and moves to another place.

So the idea that if a community interested in growth for its own sake narrowly circumscribes and safeguards that growth, it has eliminated the air pollution consequences of that activity is simply not part of the real world.

A conference was held in the summer of 1975 in Columbus, Ohio, where many scientists expressed concern over this impact.

They noted particularly the experience of Norway, which has experienced a substantial decline in its fishery resources, which has been attributed to acid rain.

A 20-year study in Scandanavia indicates that acid rain has killed fish and caused an ecological change. Forest growth and yield have declined.

The Senator indicated an interest in the tree farming activities of his own State.

Pollution levels at the national primary and secondary standards can affect forest growth and forest yield.

Fish populations have been adversely affected by acid rain in 75 percent of the high elevation lakes of the Adirondack Mountains.

Pollution at less than the concentrations allowed by the national secondary standards have been proved to damage vegetation. Acute injury to spruce trees has been reported when average concentrations of sulfur dioxide were only two-thirds the level allowed by ambient secondary standards.

Studies indicate that other crops are also damaged at concentrations less than the secondary standards, including, Mr. President, wheat, potatoes, spinach, apples—an important crop in the Senator's State—and the white pine.

Exposure to low level concentrations of pollutants, as indicated earlier, does have health effects.

Studies done in Japan since the establishment of primary standards in the United States indicate that air pollution concentrations lower than the national standards cause increases in reported illnesses.

The National Cancer Institute estimates that 60 to 90 percent of cancer is environmentally caused.

The ambient standards as presently established, Mr. President, do not include consideration of these facts.

The nondegradation amendment is intended to help reduce overall emissions

and thus provide protection against these kinds of adverse effects.

The Senator deplores what he describes as the effect of the nondegradation provision in taking decisionmaking away from State and local government and concentrating it at the national level.

Now, what does the bill do? The bill provides protection for class 1 areas, national parks and wilderness areas. I assume that when we established those areas, going back years ago, that it was a national decision to protect the natural qualities of those areas. Some of those were established at a time when air pollution as a threat was not recognized.

But, nevertheless, today we understand that air pollution is a threat to the pristine natural qualities of these natural parks and wilderness areas.

So this bill does provide protection for national park and wilderness areas.

There are a great many other national monuments, historical sites, and so on, that are not included in the class 1 protection. Maybe they should be. There are those who believe they should be, but we have not done so in order to minimize the kinds of fear expressed by the Senator from Virginia.

With respect to other areas, they are classified as class 2 areas. The Senator seems to describe those as areas in which the States have no authority.

Mr. President, the States have the authority to decide on siting decisions. Where are we going to build powerplants? The State decides that. Where we are going to build new papermills? The State decides that.

Yesterday I put in the RECORD a letter that had been written to the distinguished Senator from Vermont by the Environmental Protection Agency in January of 1977. It indicates the kind of industrial activities that are permitted in class 2 areas and as to which the State has the authority to make the siting decisions.

Let me read some of them: Powerplants, coal cleaning plants—otherwise called thermal dryers, Kraft pulpmills recovery furnaces, portland cement plants, primary zinc smelters, iron and steel metallurgical furnaces, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators, sulfuric acid plants, petroleum refineries, lime plants, byproduct coke oven batteries, sulfur recovery plants, carbon black plants.

I do not know how many of those the Senator's tree farmers would like sited in the middle of their tree farms, but it seems to me that they have ample choice. When one considers the choice of activities that are less polluting than these, the range is pretty wide and the decisions as to which of those should be permitted is a State and local election. It is not a decision that is made by this bill. So the siting decisions are made at the State and local level. That is an important State authority.

Second, the bill requires that the best available control technology be used to minimize the polluting effects of activities of this kind.

I cannot believe that the Senator would agree that a new powerplant or a new coal plant located near his tree farms should not take advantage of the best technology available to minimize the emission of pollutants in his tree farms. In any case, the kind of best available control technology to be installed is, again, a State and local decision. The State decides as to whether there should be new class 1 areas, whether those new class 1 areas are Federal lands of one kind or another or State parks and areas that the State has protected. The State alone decides whether or not to include those areas, to add them to the class 1 protection of the bill. So a good deal of State authority and State responsibility are required under the provision of the committee bill. I think that is as it should be.

However, to say that the standard of air quality which circumstances have mandated for years in cities such as Los Angeles, Chicago, Philadelphia, and New York, in order to provide minimal protection for health, is good enough for the Senator's tree farmers or for my own natural areas in Maine, I submit, is not and would not be wise national policy.

That is the gist of the committee's position on the need to do something better.

(At this point, Mr. LEAHY assumed the chair.)

Mr. President, I conclude with this observation: I have been involved in writing environmental laws for 14 years; and one of the great frustrations that we faced in writing those laws was that much already had been done in building this country and this industrial structure which created unacceptable pollution which could not be undone. Nobody could seriously suggest that the way to move into the pollution problems of Los Angeles, Chicago, Philadelphia, and New York is to destroy those polluting activities which cause excess pollution over the primary and secondary standards. Nobody would seriously suggest that the way to get New York down to the standards that the Senator from Virginia advocates for the country is to move in there and to close plants, close down power generating facilities, close down shopping centers which attract automobiles. Everybody knows that that would be an unreal answer to the problems of the dirty air areas of this country. It would bring the economy to a halt, create massive unemployment, and destroy our ability to deal with the very problem we are seeking to cure.

So the Committee on Environment and Public Works—some distinguished Members of this body have served on that committee during those 14 years, Members ranging from the liberal to the conservative—long ago concluded that one thing we could do was to insure that the mistakes which created the problems of Los Angeles, Chicago, New York, and Philadelphia would not be repeated as other areas of the country sought to grow and to provide futures for their people.

If we are to return to the kind of philosophy that produced those mistakes —the philosophy of "Let anybody do what he wants to until he gets up to the national primary and secondary standards"—we are going to be faced with the same condition again.

I remind the Senate that the nondegradation provisions apply only to major emitting facilities—those facilities that can produce a hundred tons or more of pollutants a year. Below that level in nondegradation areas there are going to be all kinds of other pollution-generating activities going on: the building of homes, the building of main street businesses, small activities. All those are going to be served by automobiles. The degree to which automobiles contribute to growing pollution problems in nondegradation areas of the country depends, of course, upon how soon the automobile industry cleans up the car. It has not displayed a great sense of urgency about that.

Yesterday we extended the time some more. But all those things which are not regulated directly under the nondegradation provisions of this bill are going to be generating pollution and, in the process, limiting the capacity of clean air areas to grow much more than is done by the committee bill. The committee bill does not do anything to restrain those activities.

All we are trying to do, I say to the Senate, is to insure, in a way that may not really be very effective if the truth be told, that the major industrial polluters will be put in place in response to some rational policy—a policy that is triggered by national standards, but a policy that will be implemented in large part by State and local governments.

I believe that is a reasonable approach. It is an approach that would permit the building of a 1,000-megawatt powerplant in my State—more than one. We do not have any that large at the present time. So I do not regeard that as much of a restriction. It would permit the duplication of the largest pulp and paper mill in my State. We have some now which are pretty large. It would permit their duplication. We have more than 20 pulp and paper mills. They all could be duplicated in my State, under the nondegradation provisions of this bill.

I say to the Senator that if he wants a 5,000-megawatt powerplant in his tree farms, that could be permitted, that might even be permitted, under the provisions of our bill, provided it is not located in a valley between steep hills, provided it is built on flat terrain and there are not other constraining considerations. But how many places want a 5,000-megawatt powerplant in their neighborhood, even if it were permitted? I do not know. That is a question for the Senator to answer.

Plants smaller than 1,000 megawatts have been adequate for our needs in northern New England. Frankly, I think that, in terms of assuring the viability and efficiency of electricity distributing systems, it is better to distribute the generation of power in smaller plants. But that is a decision for the States to make, under the constraints of air quality, minimal air quality, and under the constraints of terrain.

Now, the bill did not create the constraints of terrain. We did not build the mountains of Maine, we did not create the mountains of West Virginia, we did not create the mountains of western Virginia, we did not create the Rockies or the Alleghenies, the Appalachians. God created them, and they do impose constraints with respect to air quality that God did not create when he built the desert or the plains. But those constraints exist whether or not this bill is passed. Those constraints obtain, and anybody who lives in the mountainous areas of this country who does not pay attention to them just does not care about the health of his children, because if you build a dirty polluter in the bottom pit of a valley you increase the risk to health, and you attract, of course, others.

That is the philosophy behind the nondegradation provisions. If the Senators are willing to accept, in light of all of these considerations, national ambient primary and secondary standards as adequate, adequate in all respects for health, welfare, other air quality values that the people of this country prize, then they will vote for this amendment. If they agree with me that the ambient primary and secondary standards are not adequate in all cases, then they will oppose the amendment of the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. SCOTT. Mr. President, the distinguished Senator from Maine, who is very familiar with the air quality law, has expressed his views that are considerably different from my own, and I would really not recognize my amendment from the description given it by the distinguished floor leader of the bill.

I think, perhaps, it might be well to turn to the act itself very briefly to determine what the existing law is. If we look at page 143 of the report we find that Congress had delegated to the Administrator of the Environmental Protection Agency the right to establish national primary and secondary air quality standards, and then the primary ambient air quality standards are described as "air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated."

Now, Mr. President, this gives the Administrator considerable authority. I would submit that the air quality necessary to protect the health of an individual in the State of Maine and in the State of Virginia are essentially the same. Whether we live in Maine or Virginia or some other part of the country we have to breathe, we need the same clean air in one area of the country as we need in another area, as a general proposition.

But it goes further and then defines secondary air quality standards, and it says the secondary ambient air quality "shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated."

The distinguished Senator from Maine did comment on the secondary standards. I would also call attention to the provisions of the law in 42 U.S.C. 1857c-4, section 109, which reads as follows:

> All language referring to effects and welfare includes but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation as well as effects on economic values and on personal comfort and well-being.

I would not disturb in any way the authority of the Administrator to set these national standards. My only thought is that insofar as the Federal Government is concerned, the standards should be the same all over.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. SCOTT. In just 1 minute, if I may.

But the States can provide higher standards to meet local situations. Under my amendment the States would be permitted to provide higher standards.

The distinguished Senator referred to the national parks and to the national forests and his desire to protect those national parks and national forests.

I can share his concern. But the Federal Government owns this land. The Federal Government controls this land. Even before the act was passed the Federal Government, as the proprietor of this area, and undoubtedly it had not only proprietary jurisdiction but it even went further and had police jurisdiction over many of the national parks—maybe not the national forests—and I would not quarrel with the desire for pristine air quality, but if we take another example and, being familiar with my own State, I think about the valley of Virginia.

Up in the mountains we have Skyline Drive, we have Shenandoah National Park, we have a number of parks going all along the valley which goes through Virginia, and if we adopt this bill, this will provide that we cannot establish industry in the valley where some of the pollution might come over and damage the pristine areas of these parks and these national forests. Now this is a matter that concerns me. I do not believe we need to have the parks and the forests so protected that we cannot construct industry in the valley of Virginia.

What I say of my own State is, I am sure, true of various States throughout the country.

Yes, I will be glad to yield to the distinguished Senator.

Mr. MUSKIE. First of all, may I say to the Senator I wish it were possible for the Administrator to set national primary and secondary standards that fully implement the statutory language which the Senator has read.

But if it were done with respect to the nonattainment areas of this country he would impose unacceptable kinds of restrictions. To demonstrate how unacceptable they are, I can only point to the fact that the Senator, in his amendment, finds them unacceptable for the clean air areas. He says we should have nothing more than the standards as now established. The fact is, as testimony and documents disclose, the standards do not fully protect in accordance with the statutory language which gives the Administrator authority to provide for additional protection. He has had to make a pragmatic judgment in the face of the fact that he found there is no threshold on health effects, which makes it very difficult then to apply absolute health protection, and he has not been able to do that.

Second, to set a standard that protects crops in New York City is a hardly realistic standard for New York City.

So he has not set a secondary standard that protects crops. That is one of the reasons, may I say to the Senator, that we have found it necessary to provide the nondegradation standards.

Second, on national parks we are not really talking about prohibiting activities within the parks. Of course, the Federal Government as the owner of those parks can prohibit those. We do not need additional legislation to prohibit that. There is only one park in which the Federal Government finds itself somewhat hamstrung, and that is Hot Springs National Park in Arkansas, which is the middle of a city. You cannot do very much about that aspect of it. What we are concerned about are activities outside the land areas owned by the Federal Government in national park and wilderness areas which can intrude upon the values that we seek to protect within the park.

Let me cite a personal experience, if I may, to the Senator. A year ago last January, when I had launched my campaign for reelection I was up in northern Maine and it was about 6:30 in the morning. That was a very sparsely settled area of our State. It was 42 below zero. I took off in a small plane at an airport on top of the coldest hill in the eastern part of the United States. When we were up several thousand feet we were over thousands of square miles of Maine wilderness areas. There were nothing but trees. There were no public roads, no towns, and no mills. There were not even lumber mills or wood-turning mills below. It was an absolute wilderness. As the sun came up there was smog over that area. That was not created below. It was not created in the tiny little town that I had left 100 or so miles behind me.

Mr. SCOTT. Maybe it came across the Canadian border.

Mr. MUSKIE. It moved in from industrial areas of the country outside of the borders of the State of Maine. I was shocked to discover it. But it happened. If it can happen in those distances from industry, because that part of Maine is a long, long way away from the industries of Boston and Chicago and Pennsylvania, if it can happen that far

away, then one perhaps can understand why we are concerned as to what kinds of activities should be located 5, 10, 15, or 20 miles outside a natural area. That is what we are concerned about.

As I say, depending upon the size of the plant, the technology that they are able and willing to use, and the terrain in which they are sited, those activities can be located quite close to class I areas without creating dangers. Even if technically there may be a violation of the class I increments within the park area, the people who propose to build a plant can apply for consideration of the application for a permit on the basis that the damage would be to air quality values nonexistent. So there is opportunity and some flexibility even close to some of these class I areas which the bill seeks to protect.

Mr. SCOTT. Mr. President, the distinguished Senator actually is making the point for me, that under the bill as reported by the committee the Federal Government would control land areas in private ownership adjacent to or near national parks and national forests.

Mr. MUSKIE. If the Senator will yield, that is not what the Senator from Maine has said.

Mr. SCOTT. As I understand it.

Mr. MUSKIE. I said earlier that the siting decision is within the control of the State; the State handles the procedure which I have just described.

Mr. SCOTT. The Federal Government does not play a part in this?

Mr. MUSKIE. The Federal Government is interested in the overall limitations of class 2 areas. If the Senator suggests, in order to avoid any Federal intrusion we do not have a Federal law, of course the bill does not go that far. But to say that it is total Federal control as a result is also an extreme.

Mr. SCOTT. The Senator says somewhere between total and no control.

Mr. MUSKIE. I say it is the responsibility where the initiative rests with the State and where the burden rests on the State. That is not to say there is no responsibility at the Federal level. Obviously if we set Federal standards there is some responsibility at the Federal level. The Federal decisionmakers are also bound to consider the provisions for flexibility which are written into the statute, and we would expect them to be so bound.

Mr. SCOTT. I have no objection to the Federal standards that are equally applicable throughout the country. But is it not true under the amendments that are being offered today that we would write into the law the interpretations by the court in Sierra Club against Ruckelshaus that is not now statutory law? We are by the passage of this bill putting into the law the things that the court said in Sierra Club against Ruckelshaus. Is that not generally true?

Mr. MUSKIE. I think that is too broad a generalization to make considering the definition of the class 1 areas and the procedures we have written in.

Mr. SCOTT. The nondegradation clause.

Mr. MUSKIE. I mean the authority we have delegated to States and local governments. Those kinds of things were not anticipated in the Sierra Club decision to the best of my knowledge, although I will say to the Senator I did not memoralize that decision and I do not have it in mind, and the Senator has it before him. So anything I say is sort of like shooting fish in a barrel. The Senator may find the phrase in that Sierra Club against Ruckelshaus decision which will undermine my answer. But as far as I recall the Sierra Club against Ruckelshaus decision does not set out the structure of this bill. It does not set out the delegation of authority laid out in this bill or the increments which were involved by EPA under its regulations.

But aside from the increments, which are not the whole bill, by any means, and the definition of the area to which they apply, I think the bill contains important changes.

Mr. SCOTT. Mr. President, I was not trying to put the Senator in a box. I have not read the decision myself recently.

Mr. MUSKIE. It would be the Senator's prerogative to so do if he wanted.

Mr. SCOTT. I have not read the decision myself for a year or more. But I do believe, and I believe the Senator would agree, that the nondegradation provision is similar to what the Supreme Court said.

Mr. MUSKIE. Yes. The objectives of both are the same.

Mr. SCOTT. And we would not put into statutory law at least a portion of the decisions of the Sierra Club against the Ruckelshaus decision.

Mr. MUSKIE. But all the remaining provisions of the bill are important attempts to implement those increments in the real world.

We are asked and begged to do so by industry, when we first began hearings, because they otherwise foresaw the possibility of ad hoc dealing with this question by the courts on a case by case basis with the long stretched out period of uncertainty, if we were to leave it to EPA regulation and the court's interpretation.

Now, we could leave it at that, and frankly I was tempted last year, when we got into this wrangle about nondegradation, to say, "Let's forget it and let EPA and the courts handle it."

But I do not really think that is in the public interest, or the interest of industry. I think we need some certainty here, and I think also we need to have a significant State role in implementing it.

We have tried to write a significant State role into this measure, and I think we have. But if one's definition of a significant State role is no Federal role at all, then we have not done that.

Mr. SCOTT. Mr. President, as the Senator knows, I am not trying to say no Federal role at all. I am saying that the Federal regulations should be the same all over the country, and apply equally all over the country. That is what my amendment says.

But it does provide that the Federal Government would not have the authority to establish Federal standards more stringent than the primary and secondary ambient air quality standards. We would leave that up to the State governments.

The distinguished Senator spoke of the conditions in New York. I would call his attention to the situations as they exist in Los Angeles. I believe that in a local area where they have particular air quality standards, the State government and the local governments do impose more stringent control.

I feel that this is the way it should be. The Senator from Maine referred to the fact that areas adjoining a national park or a national forest, if they cared to construct industry, could apply to the Federal Government for a permit, a permit from the Federal Government to construct some industry.

Mr. President, in my opinion we have more than enough Federal regulation of the business community and of the lives of our citizens, and I do not feel that we need more.

I have some question in my mind as to whether or not we are going to have further lawsuits in the event that this bill is enacted. We all know that in our Constitution, under the fifth amendment, we have a provision with regard to eminent domain. We know the prohibition that is put in the Constitution, which says "nor shall private property be taken for public use, without just compensation."

I wonder if someone is not going to raise the question of whether or not Federal control of the use that they can make of their land might not constitute a taking under the fifth amendment to the Constitution for which the Government would have to pay.

We know that Shakespeare said, if the Senators will permit me to finish my thought:

> You take my property when you take away my right to use of it.

If we are going to be telling the owner of property in the valley of Virginia or anywhere in the country that he cannot use his property, and we are going to make his use different from what other people can do with their property in other parts of the country, it may be that we will have some court decisions to determine whether or not that is a taking.

The whole thrust of my amendment is to have the law equally applicable throughout the country, with the same air quality standards set by the Federal Government, and then the States and localities could establish higher standards to meet specific local situations, as the one in the California case.

Mr. President, I know the distinguished Senator from Maine wants to respond to the comments that I have just made.

Mr. MUSKIE. Yes.

Mr. SCOTT. I do not know but that we have an irreconcilable difference of opinion on this issue. I do not see that we can add a whole lot to what has

been said. I am willing to yield back the remainder of my time after the distinguished Senator from Maine makes his remarks, in the event that he is, unless he raises something that I would like to respond to.

Mr. MUSKIE. I thank my good friend. Incidentally, let me thank the Senator for what I think ought to be a good and useful record to illuminate the differences which he and I hold, and which I am sure are shared on each side of the argument by other Members of the Senate. I think it is a good record. It has given me an opportunity to respond to some questions that other Senators and other people have put to me, so I think the record will serve a very useful purpose, whatever the outcome.

Let me say, in respect to the constitutional question which the Senator has suggested: Since the Senator, by his amendment, argues that the States ought to establish the stricter standards, then, if the States should so act, I assume that if there is an unconstitutional taking, suits might be brought against State governments, just as they might be brought against the Federal Government under the committee bill. After all, a taking by a government is a taking by a government, and if it is an unconstitutional taking it is an unconstitutional taking whether or not the Federal Government is involved.

Another point he makes is that the Federal ambient primary and secondary standards have the effect of limiting the use of property. If so, that would be just as subject to unconstitutional taking suits against the Federal Government as if the nondegradation standards applied. So the argument, if there is one, is not limited just to the nondegradation provisions of the bill.

Mr. SCOTT. Mr. President, the Senator may well be right on that. In fact, the Virginia law provides for either a taking or damage; it adds the phrase "or damage" that is not contained in the Federal law. So the State law might go even farther than the Federal law with regard to the taking of property.

Mr. MUSKIE. I thank my good friend. I am prepared to yield back the remainder of my time. I wonder if we might suggest the absence of a quorum to get enough Senators to have a sufficient second for a rollcall.

Mr. SCOTT. Mr. President, I have nothing further to say. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MELCHER). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Virginia. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Missouri (Mr. EAGLETON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New York (Mr. MOYNIHAN), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) and the Senator from North Carolina (Mr. MORGAN) are absent on official business.

I further announce that if present and voting, the Senator from Minnesota (Mr. ANDERSON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from North Carolina (Mr. MORGAN) would each vote "nay."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) are necessarily absent.

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Texas would vote "yea" and the Senator from Oregon would vote "nay."

The result was announced—yeas 17, nays 71, as follows:

[Rollcall Vote No. 186 Leg.]

YEAS—17

Allen	Eastland	Laxalt
Bartlett	Garn	Scott
Bellmon	Goldwater	Stennis
Byrd, Harry F., Jr.	Hansen	Stevens
Curtis	Hatch	Thurmond
	Helms	Young

NAYS—71

Abourezk	Griffin	Muskie
Baker	Hart	Nelson
Bayh	Haskell	Nunn
Bentsen	Hathaway	Packwood
Biden	Hayakawa	Pearson
Brooke	Heinz	Pell
Bumpers	Hollings	Proxmire
Burdick	Huddleston	Randolph
Byrd, Robert C.	Humphrey	Riegle
Cannon	Inouye	Roth
Case	Jackson	Sarbanes
Chiles	Javits	Sasser
Church	Johnston	Schmitt
Clark	Kennedy	Schweiker
Cranston	Leahy	Sparkman
Culver	Lugar	Stafford
Danforth	Magnuson	Stevenson
DeConcini	Mathias	Stone
Dole	McClure	Talmadge
Domenici	McGovern	Wallop
Durkin	McIntyre	Weicker
Ford	Melcher	Williams
Glenn	Metcalf	Zorinsky
Gravel	Metzenbaum	

NOT VOTING—12

Anderson	Long	Moynihan
Chafee	Matsunaga	Percy
Eagleton	McClellan	Ribicoff
Hatfield	Morgan	Tower

So the amendment (No. 378) was rejected.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER (Mr. NUNN). Will Senators please take their seats and cease conversations?

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, may we have order now in the Senate?

I would like the attention of the Senator from Ohio (Mr. METZENBAUM) and other Senators.

The PRESIDING OFFICER. The Senate is still not in order. Will the Senator from West Virginia suspend until the Senate is in order?

Senators will please take their seats and cease all conversations.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I take the floor at this time to attempt to ascertain how many amendments remain to be called up and whether or not a reduction in time on such amendments can be secured.

I ask Senators now to indicate, those who have amendments and who intend to call them up, how many amendments they have and whether or not they would agree to a reduction in time from 2 hours to something less.

Mr. BAKER. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield to the distinguished minority leader.

Mr. BAKER. Mr. President, I am glad the majority leader made that request, because I would like to see that we move as promptly as possible with the remaining amendments and to passage of the bill.

I have two amendments. I will offer one of them and I would be more than happy to reduce my time from 2 hours to 1 hour on that amendment.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader, Mr. President, and I make that request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CURTIS. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from Nebraska (Mr. CURTIS).

Mr. CURTIS. Mr. President, this Senator has an amendment to offer, but it has now been through some negotiations and reduced down in scope.

I anticipate that it will be accepted. We should dispose of it in a matter of 5 minutes on each side. On the other hand, other Senators might have some questions about it. So if we had 10 to 15 minutes on a side, in all probability we would yield some of that back.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on the amendment by Mr. CURTIS be limited to 20 minutes, to be equally divided—or 30 minutes?

Mr. CURTIS. Make it 30 minutes.

Mr. ROBERT C. BYRD. Thirty minutes, to be equally divided.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President,

I yield to the distinguished Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have two amendments, one of which I do not intend to call up. The other is cosponsored by Senators RANDOLPH, BAYH, and HEINZ. That one I do intend to call up, and I think we will need the full 2 hours.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. WALLOP. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. WALLOP. I have an amendment which I intend to call up. It should not take more than 20 minutes—10 minutes on each side—and I would be willing to limit it to that.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a time limitation on the amendment by Mr. WALLOP of 20 minutes, to be equally divided in accordance with the usual form.

Mr. WALLOP. I think we will be able to yield back some of that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask Senators, in considering the time they require, to bear in mind that we have time on the bill that we could use. So if we could get the time down to a bare minimum, I assure Senators that I would be happy to yield and provide additional time, if such additional time is required for any reason.

Mr. ROBERT C. BYRD. I thank the distinguished manager of the bill.

Mr. BURDICK. Mr. President, I have a minor amendment which I have discussed with the leadership, and it should not take more than 5 minutes to a side.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a 5-minute limitation, to be divided in accordance with the usual form, on the amendment by Mr. BURDICK.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from Utah.

Mr. HATCH. Mr. President, I have seven amendments. I probably will call up three. I will try to reduce the time to an hour for each of the three amendments.

Mr. ROBERT C. BYRD. But the Senator is not sure that he will call up all of them?

Mr. HATCH. I am not going to call up all seven, but I will call up three.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on the three amendments by Mr. HATCH, there be a time limit on each, to be divided in accordance with the usual form, of 1 hour.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HUDDLESTON. Mr. President, I have three matters and I am hopeful that each will be accepted. I think 5 minutes on a side would be adequate, with the provision that the distinguished Senator from Maine indicated, that if more time is necessary, we can have it.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on each of the three amendments to be called up by Mr. HUDDLESTON there be a time limitation, to be divided in accordance with the usual form, of 10 minutes each.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from South Carolina (Mr. THURMOND).

Mr. THURMOND. Mr. President, I have an amendment that I will offer on behalf of the Defense Department.

Mr. ROBERT C. BYRD. Mr. President, may we have order, so that the Senator can be heard?

The PRESIDING OFFICER. The Senate will be in order.

Mr. THURMOND. If I can speak with the manager of the bill for 5 minutes, I think he will accept the amendment.

Mr. ROBERT C. BYRD. Mr. THURMOND has one amendment. Is it agreeable with the managers of the bill and Mr. THURMOND that the time be limited to 10 minutes, to be equally divided?

Mr. THURMOND. No. I wish to talk to the manager of the bill. I think he will accept the amendment. I would rather talk to him.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Texas.

Mr. BENTSEN. Mr. President, I have an amendment. I have conferred with the leadership.

The PRESIDING OFFICER. Will the Senator from Texas please suspend? The Senate is not in order. The Presiding Officer cannot hear the Senator.

Mr. BENTSEN. Mr. President, I have conferred with the majority and minority leadership on the committee, and I think my amendment will be accepted. With that in mind, I am sure that 5 minutes will take care of it.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, I ask unanimous consent that there be a time limitation on the amendment by Mr. BENTSEN to be controlled in accordance with the usual form, of 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HATCH. Mr. President, it is my understanding that Senator DOLE has an additional amendment which will require an hour on each side.

Mr. ROBERT C. BYRD. What is that?

Mr. HATCH. It is my understanding that Senator DOLE and I have an additional amendment which will take an hour on each side.

Mr. ROBERT C. BYRD. An hour on each side?

Mr. HATCH. I think we can reduce that, but let us ask for that right now.

Mr. ROBERT C. BYRD. That is already in the agreement. Mr. DOLE is not here. We will call that the Dole-Hatch amendment or the Hatch-Dole amendment, either way the Senators work it out. It is one amendment; possibly 2 hours on it.

I understand that Mr. GRAVEL has an amendment on which there should be a 10-minute limitation. I ask unanimous consent that there be a time limitation on the Gravel amendment of 10 minutes, to be equally divided in accordance with the usual form.

Mr. HUMPHREY. Mr. President, a procedural matter: It would be very helpful if those amendments which are within the time frame of, say, 5 minutes on each side or 10 minutes on each side, or those that apparently have been cleared with the manager of the bill and the ranking minority member, could be called up quickly and we could get them out of the way. Then we would know how much time we are faced with for the remainder of the day. I would appreciate it very much if that could be done.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, where possible, Senators who have amendments which they believe will be accepted within a very short time call those amendments up first. That would be as follows—not necessarily in this order, but it could be——

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. MUSKIE. I think the Bartlett amendments are scheduled first.

Mr. ROBERT C. BYRD. Following the Bartlett amendments—if Senators will take heed, I ask unanimous consent that following the amendments by Mr. BARTLETT, the amendments be called up in this order: Mr. BENTSEN; then we will go to the other side—Mr. THURMOND; then we will go to this side—Mr. HUDDLESTON; then we will go to that side—Mr. WALLOP; then we will come back here—Mr. BURDICK; then Mr. GRAVEL; then Mr. CURTIS.

Those are the amendments that appear to be in the category that the distinguished Senator from Minnesota mentioned.

I thank all Senators.

Mr. STEVENS. Mr. President, I have an amendment, also.

Mr. ROBERT C. BYRD. Was that order entered into?

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STEVENS. Depending upon what happens with the Gravel amendment, I should like to reserve at least 30 minutes on it.

Mr. ROBERT C. BYRD. Would the Senator want that to follow the Gravel amendment?

Mr. STEVENS. We will determine that after the Gravel amendment is disposed of.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that if Mr. STEVENS calls up an amendment, he be recognized upon the disposition of the Gravel amendment, if he wishes to call up the amendment; that if he does so, there be a time limitation thereon of 30 minutes, to be equally divided in accordance with the usual form.

Mr. STEVENS. I thank the Senator.

Mr. JAVITS. Mr. President, I have to have a brief colloquy with the managers of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, reserving the right to object, can we arrange 10 minutes for that?

Mr. ROBERT C. BYRD. Yes. I make that request. When would the Senator like that to ensue?

Mr. JAVITS. We will work that out.

Mr. ROBERT C. BYRD. I make such request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Does that cover the request with respect to the Stevens' amendment, or has that already been agreed to?

The PRESIDING OFFICER. That has been agreed to.

Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized to call up an amendment.

UP AMENDMENT NO. 382

Mr. BARTLETT. Mr. President, I have at the clerk's desk a modified version of amendment No. 382.

Mr. HANSEN. May we have order, Mr. President.

Mr. BARTLETT. I ask the clerk to report.

The PRESIDING OFFICER. The Senator from Oklahoma will suspend. The Senate is not in order. Will the staff members please take their seats. The Senate is still not in order.

The Senator from Oklahoma.

Mr. BARTLETT. I have at the clerk's desk a modified version of amendment No. 382, and I ask the clerk to report and read the amendment in its entirety.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BARTLETT) for himself and Mr. BELLMON proposes unprinted amendment No. 382:

On page 4, line 4, insert the following new paragraph (2), and renumber all remaining paragraphs:

(2) In determining regions or portions thereof in excess of the ambient air quality standards under subsections (1) (A), (B), and (C) of this subsection, such regions must be identified on the basis of statistically sound air quality sampling procedures in an effort to obtain results representative of the region as a whole, which to the extent practicable, within the time required, shall not rely on either a single measurement, or measurements from a single station.

Mr. BARTLETT. Mr. President, each State, in exercising its respective State air quality control implementation plan, develops a representative statewide ambient air sampling network. The purpose of the network is to obtain current ambient air pollution concentration levels so that they can be compared against ambient air quality standards.

The primary and secondary standards are for six major air pollutants; namely, sulfur oxides, particulate matter, carbon monoxide, photochemical oxidants, hydrocarbons, and nitrogen oxides.

Primary ambient air quality standards are those which, allowing an adequate margin of safety, have been determined necessary to protect the public health. Secondary standards are those which have been determined to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air.

The argument can most certainly be made that ambient air quality standards, as dictated by the EPA and implemented by the States, are unnecessarily stringent, notwithstanding the margin of safety. However, I will not argue that point now.

I rise now to speak against the inefficient, hit-or-miss, totally inadequate sampling procedures sanctioned by the Environmental Protection Agency in obtaining ambient air quality data.

The typical procedure has been to set up one or two stations to measure the quantity of a given pollutant, to base the ambient air quality standard thereupon, and to gerrymander an enormous air quality control region—AQCR—around those one or two stations. Thereafter, the attainment or nonattainment of the entire AQCR, with respect to that particular pollutant, is at the mercy of a pitifully few monitoring stations, no matter how poorly or inappropriately they are located.

Not only that, but excursions above the ambient air standards are recorded and act to penalize an AQCR without respect to the time of day. It is quite well known that pollutant levels vary throughout the day, and that if the levels were averaged over a reasonable period of time, there would be markedly fewer "violations."

To cite an example with which I am intimately familiar, just such a sloppy sampling procedure nearly thwarted the construction of a General Motors assembly plant in Oklahoma City. As it turned out, several oil companies in the area graciously and generously agreed to assume the financial and physical burden of installing expensive equipment on their oil storage facilities, thereby reducing their own emissions and enabling the GM plant to proceed with construction. In so doing, these companies not only expended large sums of money they would not otherwise have had to, but they also sacrificed valuable flexibility in obtaining emissions offsets for their own future expansion.

Back to the point at hand. The single pollutant holding up construction of the plant was hydrocarbons. Hydrocarbons, the vast majority of which come from automobile emissions, combine with nitrogen oxides through the process of photochemical oxidation to form such products as ozone.

I was advised that only one monitor was used to obtain the oxidant level for the region and that this monitor was located near the intersection of two heavily traveled multilaned roads. Because automobiles are Oklahoma's main contributor to the level of oxidants the measurement was probably not representative of the region.

We must establish the requirement that air quality standards and attainment be based on data from an adequate number of monitoring stations to establish a thorough and accurate picture for the entire region.

My amendment merely calls for a sampling procedure that attempts to obtain results representative of the region as a whole. It further provides that in no case shall either a single measurement, or measurements from a single station, be allowed to form the basis of classification for an air quality control region.

Mr. President, let me add a brief statement, because I understand from the floor manager that this amendment is acceptable, and I know there are many amendments.

I want to recite again the reason for the amendment. General Motors Co. was wanting to locate a plant in our State which would increase oxidant levels and, based on the monitoring of one monitoring station, the entire local region had been declared a nonattainment area.

We were very concerned because there were just the results of one monitoring station for a large region; and, second, it was my understanding, and I was so informed, that this monitoring station was located right near the intersection of two multilane superhighways. In addition, it was located very close to a battery plant.

It was the contention of some that the results were not representative of the whole region, which goes clear down into Texas and covers Oklahoma City and parts of central Oklahoma.

I believe this amendment will go a long way toward correcting such situations in our part of the country and in other parts where there is just one monitoring station, where there is inadequate information, or a single measurement is used.

Mr. DOMENICI. Mr. President, will the Senator from Oklahoma yield?

Mr. BARTLETT. I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I commend the distinguished junior Senator from Oklahoma for his work on this amendment. As he knows, the committee worked long and hard in the area of nonattainment and has provided some definition where otherwise things were vague.

I think it is safe to say the committee recognizes in the bill and in the report that nonattainment, as it might affect growth, is one of the most serious problems with the entire regulatory scheme for clean air.

If I might just state what I think the amendment does, very briefly, I think this in an effort to make the monitoring with reference to nonattainment and the tradeoffs that might ensue to make that

more scientific or as scientific as possible and environmentally as sound as possible, because it is direction to make sure that we do not use aberrations or unscientific monitoring techniques in the process of arriving at nonattainment for purposes of tradeoff or purposes of compliance.

I hope the manager will accept it, and I commend the Senator for his effort in this regard.

Mr. BARTLETT. I thank the distinguished Senator from New Mexico. I want to thank him and his staff personally, for their part, the major part, in the preparation of the amendment and for the help the Senator from New Mexico has given me, because I think it is important that we do recognize that there has been a problem with the nonattainment areas in those parts of the country, such as Oklahoma, which are anxious to have more job opportunities, which desire to add industry, and also desire to stay relatively clean and to clean up further.

Mr. STAFFORD. Mr. President, will the distinguished Senator from Oklahoma yield to me?

Mr. BARTLETT. Yes, I yield to the distinguished Senator from Vermont.

Mr. STAFFORD. The Senator from Vermont understands we are now discussing amendment No. 382, am I correct?

Mr. BARTLETT. This is 382, as modified, and I will send this amendment to the Senator.

Mr. STAFFORD. The Senator from Vermont has examined generally the proposal which the distinguished Senator from Oklahoma has offered, together with his colleague, Senator BELLMON.

It is the opinion of the Senator from Vermont that the amendment will add to the committee bill and, for the minority side of the committee, the Senator from Vermont is prepared to accept the amendment.

Mr. BARTLETT. I thank the distinguished Senator from Vermont.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. MUSKIE. I have looked at the amendment and, with the distinguished Senator from Vermont, I am willing to accept the amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. BARTLETT. I yield back all my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment was agreed to.

UP AMENDMENT NO. 383 (MODIFIED AMENDMENT NO. 381)

Mr. BARTLETT. Mr. President, I have at the clerk's desk a modified version of my amendment 381, and I ask the clerk to report and read the amendment in its entirety.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BARTLETT) for himself and Mr. BELLMON, proposes unprinted amendment No. 383, which is a modified version of amendment No. 381.

Mr. BARTLETT. Mr. President, I ask unanimous consent that this amendment be modified so that it reads that on page 4, line 23, add new subsection (6).

The purpose for this is that we just passed my other amendment which makes this necessary.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 4, line 23, add new subsection (6):

"(6) In classifying regions under this subsection, where adequate air quality information exists, the State, with the approval of the Administrator, may subdivide and reclassify regions down to any size that still allows for efficient and effective air quality management."

Mr. BARTLETT. This amendment merely allows the States to subdivide and reclassify regions down to any size that still allows for efficient and effective air quality management. The report accompanying S. 252 indicates that the committee desired to allow the States some flexibility in determining the size of air quality control regions—but the report says that such regions should not be smaller than counties. I have reservations about this procedure for three reasons: First, there is no such language in the legislation itself—and I believe there should be; second, I believe that, especially in the West where counties are often very large, the State should be allowed to designate regions smaller than that size if they deem it appropriate; and third, I believe further that States ought to be allowed the flexibility to be able to isolate highly polluted regions. This way clean areas around such polluted areas would not have to be treated in the same manner as the dirty areas.

Mr. President, allowing such flexibility seems to me the essence of commonsense and to be in line with the committee's desire to allow as much State discretion as possible.

Mr. President, the report has language in it very similar to this but speaks of classifying regions under this subsection where adequate air quality information exists to smaller regions that would be as small as counties.

I would like to point out that in the desire to make the regions smaller in many cases, which I support, county lines may not offer the delineation of the area that is desired. It might be a part of a county, particularly in the Western part of the United States where the counties are large or in any part of the country it might be a part of two counties, but not include all of either one.

So I offer this amendment for the purpose of taking language in the report which, I think, is very important, and changing it slightly, and making it a part of the law.

I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I rise again to commend the Senator from Oklahoma for this amendment. I think he has properly stated that it is the committee intent, as expressed in the report, that the areas be as workable as possible. But since there is a problem I think it is more appropriate that we put it in the language of the law that we permit these particular areas to be modified, be made so that they are relevant to the monitoring that is taking place.

I believe that is the Senator's goal. They might be now or they might not be. He may know examples where he thinks they are not. There may be areas where they are. But what the Senator is saying is it will be permissive to break down these airsheds into as small as needed for the measuring to be relevant and for the impact of the pollution to be properly measured and also determined relevant to the area being protected, and I commend him for it and I hope the committee managers will accept the amendment.

Mr. BARTLETT. I thank the distinguished Senator from New Mexico, and I wish to thank him and his staff for the preparation of this amendment.

I yield to the Senator from Vermont.

Mr. STAFFORD. I appreciate the Senator from Oklahoma yielding.

On behalf of the minority, I think with the entire committee, I am in a position to say that having examined the Senator's amendment, as amended, we believe it adds to the committee bill, and the committee is prepared to accept the amendment.

Mr. BARTLETT. Mr. President, I am prepared to yield back my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MUSKIE. Mr. President, if I may just say, I am willing to accept the amendment which I find consistent with the following language in the report, and I read it:

Where adequate information is available, the States may divide regions into various portions which fall into different categories. Generally, this subdivision of regions should not be on the basis of jurisdictions smaller than counties. Any subdivision of regions is subject to the administrator's review.

The language of the Bartlett amendment has been reworked to more specifically and effectively apply to his problem. I find it acceptable and am willing to do so.

Mr. BARTLETT. I thank the distinguished Senator from Maine.

I yield back the remainder of my time.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back?

All time being yielded back, the question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 384

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. LEAHY). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. BENTSEN) proposes unprinted amendment No. 384.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2 after line 17, insert the following new section and renumber succeeding sections accordingly: "Sec. 2 Section 103 of the Clean Air Act is amended by adding the following new subsection:

'(g) GULF COAST AIR QUALITY—There are authorized to be appropriated to the Administrator $5,000,000 beginning in fiscal year 1978 for a study of air quality in the Gulf Coast region, including analysis of liquid and solid aerosols and other fine particulate matter and the contribution of such substances to visibility and public health problems in the region. 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.' "

Mr. BENTSEN. Mr. President, I yield myself 5 minutes.

During the debate on the Clean Air Act in committee, the entire question of nonattainment occupied our attention for several weeks. Eventually, an amendment was passed which provided a form of waiver for the States which did not choose to follow the so-called tradeoff policy promulgated by EPA in December of 1976.

During the debate on this legislation in the committee, I pointed out to the Members that certain areas of the country, particularly Houston and the gulf coast, would have severe problems attaining the oxidant standard, even if every automobile were banned from the streets. Houston exceeds the standard, for example, by 75 percent, and much of Houston's pollution comes from stationary sources, not automobiles.

The amendment I offer today is a very modest study amendment—$5 million to study the air quality problems of the gulf coast region of Texas and to determine if present oxidant reduction strategies are adequate to remedy them. Our air board believes that EPA is not following the proper course; they believe there are severe problems with aerosols, and that the rather unusual combination of weather conditions and concentrated industry make this area a special case.

Along the Texas culf coast, we have a heavy petrochemical complex. We also have persistently high humidities, and salt in the air which comes in from the gulf coast. It well may be that strategies that work elsewhere will not be appropriate to Houston.

This study is to be under the control of EPA, but I want to emphasize for legislative history, that EPA is not to conduct an inhouse research project along the gulf coast. We specifically want environmental experts from NIH involved, as well as other outside experts. May I also say that the Houston Chamber of Commerce, which has spent $1.5 million of its own funds in looking at similar problems should be consulted and utilized. Their study, I am assured, is a thoroughly objective one, and EPA would do well to work in concert with them.

I believe this modest amendment will do much to alleviate the feelings of my constituents that EPA is proceeding blindly on a course which will not clean up the air in the Houston-gulf coast and which will not take into account the extraordinary factors that are present there.

I have discussed this amendment with the sponsor of the bill, and I believe he is in accord that the amendment would be a helpful one.

Mr. President, for several weeks the committee debated the problems of nonattainment and at the culmination of that debate an amendment was adopted by the Senator from New Mexico (Mr. DOMENICI) which gave an option to some of those States that did not want to follow the tradeoff provisions, and that is of substantial help in trying to accomplish the goals of clean air.

But during that debate we pointed out some of the problems of the gulf coast and in particular, Houston, Tex. We have a problem there with the oxidant standard which is exceeded by approximately 75 percent. Yet if we stopped all the automobiles at the city limits from coming into Houston and told people they had to walk into town to their jobs, we still would not achieve the oxidant standards under the legislation.

Obviously, something has gone askew. We have not been able to get the corollary results between hydrocarbons and oxidants, a photochemical process that is not fully understood by scientists yet.

We have some unique conditions along the gulf coast. We have the highest concentration of petrochemical industries of any place in the United States. We have high humidity and in the summers a great deal of heat. We have salt. We have great marshlands and conifers.

We think we have a unique problem in which we need a study to try to determine the best course in trying to achieve these oxidant standards.

I proposed a $5 million study, not an inhouse study, but a study by EPA where they bring in the NIH, where they talk to the Houston Chamber, which has spent $1½ million in an objective study trying to find a way to achieve the objectives on oxidants on clean air.

I commend this study. I have discussed it with the sponsors of the bill and with the managers of the bill on the majority side and on the minority side.

I hope they are in accord with it. I understand they are. I respectfully request their support of it.

Mr. STAFFORD. Mr. President, if the distinguished Senator from Texas will yield to me, I recall the difficulties which the State of Texas and other parts of the country have faced with regard to oxidants and for both the chairman of the subcommittee, Mr. MUSKIE, and myself, and the committee, we are prepared, after examining the proposal of the distinguished Senator from Texas, to accept the proposed amendment.

Mr. BENTSEN. I thank the managers of the bill.

With that understanding, Mr. President, I yield back the remainder of my time and move the adoption of the amendment.

Mr. STAFFORD. Mr. President, I yield back the remainder of the committee's time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment of the Senator from Texas.

The amendment was agreed to.

Mr. STAFFORD. Mr. President, in light of the list of amendments we expect to take up, I suggest the absence of a quorum and ask unanimous consent for the time to be charged on the bill, equally divided between the managers of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, in order that the time may be utilized to the very best advantage, that while discussions are going on between Mr. THURMOND and Mr. MUSKIE, the Senate now proceed to the consideration of the amendment by Mr. BURDICK, without prejudice to the lineup of other Senators.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from North Dakota is recognized.

UP AMENDMENT NO. 385

Mr. BURDICK. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Dakota (Mr. BURDICK) proposes an unprinted amendment numbered 385:

On page 19, line 2, after the words "Federal, State, or local" insert the words: "Air Pollution emissions and Air Quality".

Mr. BURDICK. Mr. President, the goal of establishing sound air quality standards for the Nation is a goal which I wholeheartedly support. The 1977 Clean Air Amendments under discussion, however, need a slight clarification to provide for an orderly transition from the 1975 amendments. Therefore, I am proposing an amendment to S. 252 to provide for this orderly transition by clarifying the status of facilities which are presently under construction but which have not yet received all of the required permits.

The problem with the legislation as it is drafted is that it could be interpreted to require a facility to have all necessary preconstruction approvals or permits required by Federal, State, or local laws or regulations in order to be grandfathered under the act. Thus a facility may have

all of the approvals, State and Federal, for air emissions, and be under actual construction and yet be lacking one permit for non-air-related activities. This facility would then have to go through an additional new review under these amendments.

A case in point is a large consumer-owned electrical generation station presently under construction in the West. The project has acquired approximately 45 of the 47 or so permits required. Most significant, all of the requisite State, local, and Federal air quality permits have been obtained. These include approvals from the State Air Quality Division and the U.S. Environmental Protection Agency under the present regulations for the prevention of significant deterioration. Further, they have received approval from all Federal and State regulatory agencies so they could begin the construction on the plant. The facility has been under actual construction for 11 months. Actual site preparation work is nearing completion and structural steel for the first two units is up to over 200 feet. To date over $90 million has been spent and contractual commitments exceed $345 million.

If the law were passed as presently written, this facility could again be subject to review, because it does not have a permit required under another Federal law to construct associated facilities. This duplication and unnecessary review will simply cause additional delays in the project and increase the cost of electricity to millions of consumers without adding anything to the Clean Air Act Amendments.

The new language I am proposing today would clarify the status of such a facility under the 1977 amendments and provide for an orderly transition from the existing law so that electric service for millions of people is not disrupted.

Mr. President, this amendment applies to those facilities that are under construction and have met all the clean air requirements, and are only lacking some nonair permits. We believe it only right and just that this matter be clarified.

Mr. STAFFORD. Mr. President, the managers of the bill have examined the amendment offered by the distinguished Senator from North Dakota (Mr. BURDICK), and we believe it adds to the bill as the committee has presented it to this body.

This Senator always appreciates the sparse use of words on the part of the distinguished Senator from North Dakota. It fits in with this Senator's New England concept of language.

Also, this Senator cannot resist saying that he has frequently been involved with the Senator from North Dakota in what we both considered worthy projects in behalf of small States.

Mr. BURDICK. I thank the Senator.

Mr. STAFFORD. Under the Senator's amendment, a facility would still have had to obtain all necessary preconstruction permits for air pollution emissions and air quality for the emitting facility?

Mr. BURDICK. Yes, that is correct.

Mr. STAFFORD. In other words, the Senator's amendment would not require preconstruction permits to have been obtained pursuant to this subsection for nonemitting associated facilities, such as transmission lines.

Mr. BURDICK. Yes, that is correct.

Mr. STAFFORD. With these understandings, Mr. President, the committee will accept the Senator's amendment.

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. STAFFORD. I yield back the remainder of my time.

Mr. BURDICK. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Dakota.

The amendment was agreed to.

AMENDMENT NO. 386

Mr. WALLOP. Mr. President, I call up my amendment No. 386.

The PRESIDING OFFICER. Without objection, the amendment will be considered in order at this time, and the amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. WALLOP) proposes an amendment numbered 386.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, after the table following line 20, insert the following:

"*Provided, however,* That the Governor of any State may, upon application by any person, after notice and the opportunity for public hearing, and with the concurrence of the State's air pollution control agency, authorize issuance of a permit where the projected increases will result in exceedance of the twenty-four-hour maximum allowable increases specified above for such pollutants during not more than eighteen days in any annual period in any designated area, so long as no such projected exceedance over the baseline is greater than:

"Pollutant	(In micrograms per cubic meter)
Particulate matter:	
Twenty-four-hour maximum	75
Sulfur dioxide:	
Twenty-four-hour maximum	183

The variance will only be granted—

"(1) over an area of unpopulated terrain which is not less than one hundred feet above the base of any stack used by the source to disperse emissions, and

"(2) of public hearings have been provided at the State capital and in each political subdivision in which the maximum allowable increases for sulfur dioxide (or particulate matter) will be permitted to be exceeded by reason of the variance.".

On page 17, line 7, after *"Provided,"* strike the entire sentence and insert in lieu thereof the following: *"however,* That the Governor of any State may, upon application by any person and notice and opportunity for public hearing, consultation with the appropriate Federal land manager, and concurrence of the State air pollution control agency, authorize issuance of a permit where the projected increases in any part of any class I area from all sources will result in exceedance of the twenty-four-hour or the three-hour maximum allowable increases specified above for such pollutants during not more than eighteen days in any annual period (exceedance of any such maximum allowable increase for any period of less than twenty-four hours counting as one full day) so long as no such projected exceedance over the baseline is greater than:

"Pollutant	(In micrograms per cubic meter)
Particulate matter:	
Twenty-four-hour maximum	30
Sulfur dioxide:	
Twenty-four-hour maximum	100
Three-hour maximum	325

Such opportunity for public hearing shall be provided at the State capital and in each political subdivision in which the maximum allowable increases for sulfur dioxide, or particulate matter, will be permitted to be exceeded by reason of the variance.

"No such variance will be issued if the Federal land manager establishes that its issuance will result in a violation of the twenty-four hour or three-hour maximum allowable increases specified for such pollutants on more than eighteen days in any annual period, or will exceed the allowable increases over the baseline provided for under the variance.".

Mr. WALLOP. Mr. President, I offer this amendment to the class 1 and class 2 sections of the nondegradation portion of the bill for the reason that yesterday, when the Senator from Alaska, (Mr. STEVENS) offered his amendment, he pointed out something that was of a critical nature to those who would try to operate under the provisions of this bill.

In my opinion, the amendment of the Senator from Alaska went too far, for a simple reason, and that is it did not take into account the cumulative effects of these 5-percent intrusions into the class 1 areas of the country.

It is possible, under the amendment that was adopted yesterday, that five or six or seven such intrusions could surround the class 1 area, and the 5-percent intrusions might easily turn into a period of prolonged degradation of the class 1 areas of this country.

What we are trying to do is create an act which will protect the air of this country for a long time to come. It is my hope that we will not have to come back to the issue every couple of years and find that we have gone too far, or not far enough, and have to try to find our way out of the difficulty.

But the way the bill is written, it does not take into account the cumulative effect of intrusions that can take place with the present method of handling applications, which allow a 1-day worst case intrusion as a throwaway.

We must remember we are not talking about only Utah, only Wyoming, or only the West, but there are cases in the East, such as, for example, the Shenandoah Valley. It is possible, with the 1-day worst case intrusion throwaway, that the class 1 area could be ringed with so-called clean nonpolluting plants, and yet, with one 24-hour intrusion being allowed them, it is conceivable that with just that, you could get an intrusion in every day of the year from some plant among those surrounding the class 1 area.

That is a sizable environmental weakness which was not perceived. I had modelers from industry and from the Environmental Protection Agency in my office the other night until 9 o'clock, trying to make sense out of a very wobbly science, and they came to the conclusion that the bill neither provides protection for class 1 areas nor an opportunity for American industry to develop subject to them.

If this amendment were adopted, it would simply say that the 5-percent intrusion is allowed for a class 1 area, but it would conclude by saying a 5-percent intrusion from all sources, to make sure that the class 1 area was unprotected to the extent of 5 percent and no more. It would provide that 5 minutes was the equivalent of a 24-hour intrusion, and it would provide that an intrusion anywhere in the class 1 area would count as against the whole of the class 1 area.

People have talked about a particular plant project that intrudes in Utah. One advantage that my amendment would offer is that it would provide that the Federal Bureau of Land Management could provide monitoring systems to check such cases, and if the modeling proved to be wrong, and the intrusions were to the extent of 15 days, there would only be 3 days left in which such an intrusion could be accommodated under the amendment as it stands.

If adopted, it will do two things: It will take care of intrusions in class 1 and class 2 areas of the country, and it will take care of those things over a long period, so that we do not have to keep coming back.

Mr. President, I reserve the remainder of my time.

Mr. STAFFORD. Mr. President, first let me say that the Senator from Wyoming (Mr. WALLOP) is a very valuable member of the Committee on Environment and Public Works, and all of us on the committee appreciate his many contributions to the work of the committee and to the development of the bill which is currently pending before the Senate.

I have discussed with him to some extent the amendment which he has offered this morning. I am not able to accept the amendment, Mr. President, proposed by the Senator from Wyoming as two more sets of numbers to standards required under the Clean Air Act. In an attempt to provide more flexibility for growth, the amendment adds to the difficulties of modeling and adds potential redtape.

As the Senator from Maine has noted repeatedly, S. 252 does not prohibit growth. He has quoted from a letter to this Senator showing the range of industry which can be accommodated in class 2 areas under S. 252. Large facilities can even be constructed reasonably close to national parks.

The Environment and Public Works Committee spent 18 months considering nondegradation proposals. The final product, which is incorporated in S. 252, is the result of extensive analysis, debate and balancing. It represents a thoughtful and defensible point between unbridled growth and a total shutdown. Increments established for class 1 and class 2 areas in S. 252 are identical to those requirements now enforced under EPA's policy. Numerous permits for new facilities have been granted under this policy. No permit has been denied of which we have knowledge.

I would hope, Mr. President, that the distinguished Senator from Wyoming might reconsider his amendment at the present time, leave in place the carefully considered provisions of S. 252, and, in view of the complicated nature of the proposal, afford the committee an opportunity to further examine his proposal in the future. This Senator will certainly undertake to assure that we make that additional examination of the Senator's proposal. Then we can fully understand it.

On that basis, I would hope that the Senator might consider withdrawing the amendment at this time.

Mr. STEVENS. Will the Senator allow me to have 3 minutes out of his time to comment on this amendment?

Mr. STAFFORD. The Senator from Vermont yields 3 minutes on the bill to the Senator from Alaska.

Mr. STEVENS. I want to thank the Senator from Wyoming for attempting to again bring the subject before us.

I want to say to my good friend from Vermont and my good friend from Maine, it seems to me it is unfortunate that after 18 months of study by the committee the committee decided that the precise regulations which were put into effect, not as a requirement of Congress but as a requirement of a court decision brought by the Sierra Club, are the only regulations this country should live under in spite of the problems we have brought before the committee and before the Congress.

My State faces, I feel, a situation where in order to come within the terms of this Clean Air Act we will be forced to go to the industrialization of the type the Senator talks about rather than the type of resource processing we envision. In other words, I believe the net result of this bill will be to force the industrialization of of Alaska in a manner that is not compatible with our way of life. We have been seeking discretion to have slight variances that would allow Alaskans to go ahead with the proposals which are already on the horizon as far as my State is concerned.

The amendment of the Senator from Wyoming would have provided at least a small amount, albeit a small amount, of flexibility. I am sorry the committee cannot see fit to adopt even this.

I want to serve notice to the managers that this bill will, in fact, come back here. We have, in fact, granted a time limitation for this floor action. However, this Senator is not going to agree to a time limitation when this bill is reported by the conference committee unless there is some flexibility with regard to nondegradation. There cannot be a continuance of the program that was put into effect by EPA under the mandate of a court—in my opinion such inflexible requirements leaves areas such as Alaska completely at the mercy not of clear air standards, but at the creation of new national parks which would be designated Class I by statute.

That is the problem we face. It is the problem of designation of new wilderness areas and new national parks and what impact that has upon the planned, orderly growth of an area which does not seek industrialization but seeks to have resource processing installations such as smelters or refineries, or that type of installation, to aid in the future development of the great resource base of the country; namely, my State of Alaska.

I am sorry that I have to state this. It does appear to me that it is unfortunate that the committee's conclusion after such a long study was that no flexibility was in order.

It also appears to me to be unfortunate that the committee is unwilling to give some small discretion to the Governor of each State. The committee seems to assume that every Governor would exercise that discretion to the *n*th degree. That is not so. I do not believe my Governor today would exercise it at all. But the power to exercise that discretion would lead to the creation of some flexible standards, very small variances, which would accommodate the developments we see coming.

The net result of this is going to be more litigation, more chaos, and before long the clean air question we will be back here. That is unfortunate.

I thank my friend from Wyoming. I think the variance involved in this amendment is so small it would involve really only one plant for each one of these areas, as a practical matter. It would be such a limitation on growth that it would be hard to live with, but it would be something. It would say to our people, "There is a chance, in spite of the creation of these large areas, that you could still have development on your own private lands."

I think that is the absolute minimum that must be in this bill sometime before it survives this Congress. I thank the Senator for yielding.

Mr. WALLOP. Mr. President, I thank my friend from Alaska. He brings out valid points at which we must look. One of the difficulties we have by the very nature of the way the Senate is set up is that we look at environmental matters as though they were Tootsie Rolls and we could break off one piece and chew on clean air for a day, break off another piece and chew on water for a day, break off a third piece and chew on health matters for another day, and so on.

One of the problems we have is we draw lines on a map and we ask God to respect those lines despite the fact that the Senate has little control over His activities. It is unlikely that we can create wind patterns that will respect those lines. We need to have a little elbow room in that whole matter.

We speak only of air pollution and not of the effect it might have on water re-

sources, which are directly related to it. In my part of the country, we cannot think of air pollution without thinking of water waste, and other things. We cannot think only of mining without thinking of water. We cannot think of anything separately from all the rest.

There is a bit of rigidity in this. I would hope that in conference maybe some wisdom would surface. I have tried to learn.

At the request of my friend from Vermont, I withdraw my amendment and yield back the remainder of my time.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, without prejudice to Mr. THURMOND, who was to be next in the lineup, that, in the interest of the better utilization of the time, Mr. HUDDLESTON may proceed with his three amendments or until such time as Mr. THURMOND is ready to proceed.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kentucky is recognized.

Mr. HUDDLESTON. Mr. President, I have three amendments. They grow out of my concern that we not do anything that unduly inhibits the continuing development and research of coal.

The PRESIDING OFFICER. The Chair advises the Senator that the time does not run until one of the amendments is specifically offered.

UP AMENDMENT NO. 386

Mr. HUDDLESTON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) proposes an unprinted amendment No. 386.

On page 121, between lines 18 and 19, insert the following:

"(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"

On page 121, line 19, strike out "(8)" and insert in lieu thereof "(B)".

On page 122, line 21, strike out "section (a) (3)" and insert in lieu thereof "paragraphs (3) and (8) of subsection (a)".

On page 122, line 25, before the period insert a comma and "and for other purposes".

Mr. HUDDLESTON. Mr. President, as I indicated, my concern is that we not inhibit in any way our continued research and development in making coal a clean burning, acceptable fuel and in meeting our air quality standards. I believe everybody recognizes, as the President has indicated, that the central part of our energy effort has to be the greater utilization of coal. Consequently, I want to make it abundantly clear in the legislation before us that we do not in any way hinder the effort to develop clean burning coal.

It is the purpose of this amendment to require the National Commission on Air Quality, in its study of alternative strategies for permitting new construction in nonattainment areas, to focus on the special problems of small businesses and Government agencies in obtaining tradeoffs of emissions from existing sources. Further, it requires that this study be submitted to the Congress by March 1, 1978, so that it can be considered here and by the States as new State implementation plans are being developed.

In addition to the small business portion of it, of course, Government facilities could well be those who are engaged in experimentation and research on developing cleaner ways to burn coal and in developing data to assist in setting standards for air emission standards.

I believe this is acceptable to the managers of the bill.

Mr. President, I yield back the remainder of my time.

Mr. RANDOLPH addressed the Chair.

The PRESIDING OFFICER (Mr. GLENN). The Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I personally want to express appreciation to the able Senator from Kentucky (Mr. HUDDLESTON) for bringing this amendment to the attention not only of the committee, but of the Senate itself.

He is knowledgeable in the area of the production of coal in the State of Kentucky and other States.

There is the very pressing problem of coal conversion which is going to be a subject of at least one other amendment.

I refer to the amendment that will be offered by the Senator from Ohio (Mr. METZENBAUM) in which I will join.

If it is agreeable with the able Senator, I would like to be included as a cosponsor of his amendment.

I feel very strongly that his argument is a valid one and it is my understanding that we are ready to take such an amendment to conference.

Mr. HUDDLESTON. I thank the distinguished Senator from West Virginia.

Mr. President, I ask unanimous consent that he be listed as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. May I ask the Senator, as I understand it, this is his most significant of the three amendments which he has presented?

Mr. HUDDLESTON. This requires a study.

Mr. MUSKIE. The study.

Mr. HUDDLESTON. The study.

Mr. MUSKIE. Mr. President, I am more than happy to accept this amendment. I have discussed it with the Senator from Kentucky.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MUSKIE. I yield back the remainder of my time.

Mr. HUDDLESTON. I have yielded back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

UP AMENDMENT NO. 387

Mr. HUDDLESTON. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) proposes an unprinted amendment numbered 387:

On page 18, line 15, after "ment" insert "or innovative fuel combustion techniques".

Mr. HUDDLESTON. Mr. President, the proposed provisions for application of best available control technology to all new major emission sources, although having the admirable intent of achieving consistently clean air through the required use of best controls, if not properly interpreted may deter the use of some of the most effective pollution controls.

The definition in the committee bill of best available control technology indicates a consideration for various control strategies by including the phrase "through application of production processes and available methods systems, and techniques, including fuel cleaning or treatment." And I believe it is likely that the concept of BACT is intended to include such technologies as low Btu gasification and fluidized bed combustion. But, this intention is not explicitly spelled out, and I am concerned that without clarification, the possibility of misinterpretation would remain.

It is the purpose of this amendment to leave no doubt that in determining best available control technology, all actions taken by the fuel user are to be taken into account—be they the purchasing or production of fuels which may have been cleaned or up-graded through chemical treatment, gasification, or liquefaction; use of combustion systems such as fluidized bed combustion which specifically reduce emissions and/or the post-combustion treatment of emissions with cleanup equipment like stack scrubbers.

The purpose, as I say, is just to be more explicit, to make sure there is no chance of misinterpretation.

Mr. President, I believe again that this amendment has been checked by the managers of the bill and that they are inclined to support it.

Mr. MUSKIE. Mr. President, I have also discussed this amendment with the distinguished Senator from Kentucky. I think it has been worked out in a form I can accept. I am happy to do so. I am willing to yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back on both sides?

Mr. HUDDLESTON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

UP AMENDMENT NO. 388

Mr. HUDDLESTON. Mr. President, I send to the desk a third amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky (Mr. HUDDLESTON) proposes an unprinted amendment No. 388.

Mr. HUDDLESTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 48, line 17, after "is" insert "(A)".

On page 48, line 19, after "Act" insert "or (B) the administrative order on consent issued by the Administrator on April 1, 1976, requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 111".

On page 48, line 21, after "1979," insert "except such administrative order or consent,".

Mr. HUDDLESTON. Mr. President, this amendment is a very narrowly drawn amendment to prevent the inequitable imposition of noncompliance penalties against the Louisville Gas & Electric Co. which has entered into an agreement with the Government for the development and experimentation of scrubber technologies. As I say, it is a very narrowly drawn amendment. It simply avoids an inequity that could occur.

Mr. President, my amendment is aimed at correcting an inequity fostered by the penalty provisions for noncompliance with applicable emission limitations. In no way is it inconsistent with the other purposes of the section of S. 252 dealing with compliance orders. As I understand it the penalty provisions of section 11 would impose a penalty for noncompliance "in an amount equal to the cost of actual compliance by such facility in any economic value which may accrue to the owner or operator." I believe that the rationale for such a penalty is clearly and correctly that noncompliance offers a competitive advantage to the owner or operator of a noncomplying facility in comparison to other such facilities in a similar field and comparable market area.

My amendment would exempt the Louisville Gas & Electric Co. has been recognized by EPA as the preeminent leader in the electrical utility industry in the effort to develop sulfur dioxide removal systems. As early as 1967 the company built a 65-megawatt generator and installed its first SO_2 scrubber as a basis for a cooperative research program in SO_2 removal and sludge disposal. Certainly, undertaking a test of good faith in the case of L.G. & E. would require no "excessive burden on the manpower and resources of the States and the EPA" as is the fear expressed in the committee report.

While L.G. & E. funded the program on its own at the outset, in the fall of 1975 a contract was signed with EPA for $1 million worth of Federal funding of the research program in SO_2 removal. Concurrently, L.G. & E. initiated a full-scale demonstration program in 1973 and in October 1976 the company received a $1.8 million grant from EPA for developing disposal methods for the sludge from the SO_2 removal system. It is this private-Federal cooperative effort which provided the basis for the present compliance schedule for L.G. & E. which was negotiated in November 1975. The compliance schedule extends to 1985, some 6 years beyond the July 1, 1979 date set out for compliance in S. 252. Though special provisions are made for cases when innovative technology is used, this extension, according to new information could extend only until 1981. Even if L.G. & E. should qualify for the extension, this leaves some 4 years in which L.G. & E. must pay compliance penalties. It has been estimated that unless my amendment is adopted, L.G. & E. would be penalized at the rate of $1.5 million per month during this period.

However, in the present instance it should be clear the consent decree and the compliance schedule of the Louisville Gas & Electric Co. requires the company to meet more stringent standards of sulfur dioxide emissions than those applicable to any other electrical generating facility in the market area. L.G. & E. has agreed to meet new source performance standards for sulfur dioxide emissions for all existing facilities for its entire system under its present compliance schedule.

Thus, if the proposed amendment is not adopted the present language of S. 252 would, in the instance of L.G. & E., stand on its head the economic rationale for the penalty provisions of section 11. Additionally, I am at a complete loss to understand the equity in a situation where perhaps the leading innovator of the electrical utility industry in the field of pollution control should be penalized for the employment of new techniques, for it is the installation of these new techniques that caused the compliance schedule to run until 1985.

Mr. President, I ask the manager of the bill if my amendment is acceptable.

Mr. MUSKIE. Yes.

Mr. President, I have also discussed this matter with the distinguished Senator from Kentucky. As I understand it, the Louisville Gas & Electric Co. is under a court order. They did so in good faith. They complied with it and they are moving faster than many other companies in similar situations to adopt scrubbers and clean up their pollutants.

The Environmental Protection Agency, as I understand it, has signed that order and it is agreeable to this proposal.

With all that, I think the public interest is safeguarded and it is agreeable to me to accept the amendment.

The PRESIDING OFFICER. Is all time yielded back on both sides?

Mr. HUDDLESTON. Mr. President, I yield back the remainder of my time.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

Mr. HUDDLESTON. I am concerned with parts of section III of the original Clean Air Act which are not addressed by the proposed Senate amendments. My concerns are directed at the promulgation of "New Source Standards of Performance" applicable to facilities that research and demonstrate new energy technologies.

In the realm of energy development, R. & D. progresses carefully before becoming commercially developed. Pilot plants are process research and development tools; demonstration plants are designed to further enhance the commercial viability of developing fossil energy technologies. And both types of facilities research and demonstrate technical feasibility, while gathering information necessary for optimizing environmental control strategies.

EPA is mandated by the Clean Air Act to develop NSPS for all "major emitting facilities." While I certainly agree that NSPS should be promulgated for all proven technologies, I fear that NSPS applied prematurely to unproven technologies could result in either hindering the progress of necessary research and development on the technology, or eliminating investigation of the technology entirely.

I envision cases in which EPA might attempt to set NSPS for new energy technologies before adequate research and demonstration has been completed. Such standards promulgation, without the necessary range of information completed, would serve no purpose but to arbitrarily regulate a process before it is either necessary or advisable. At best, such regulation represents a standard setting process which bases itself on inadequate information.

In light of our energy goals, I do not feel that we can afford to let such a situation affect our energy development programs. Avoiding the problems I have described would be most easily executed through an exemption mechanism directed at research and demonstration facilities. However, in view of our equally important environmental goals, I realize that such a mechanism may not satisfy the intent of our present amendments.

Mr. MUSKIE. I agree with the Senator from Kentucky that there is no point in setting binding standards that are without adequate foundation, or when the commercial implementation of a new technology remains some time away. Certainly we do not want to preclude any technical option on energy production through implementation of poorly formulated standards.

However, we must avoid certain past mistakes which placed technology goals ahead of environmental goals within our Federal research and development programs. We need only look at our nuclear program to recognize these dangers. I feel that it is important that the formulation of NSPS should proceed as the information available from R. & D. is realized so that assurances must be given that R. & D. is equally directed at securing optimum control strategies for the technologies in question. We cannot afford to allow environmental quality to take a backseat to our need for energy development.

Mr. HUDDLESTON. My colleague has made an excellent point, and, perhaps

having learned from past misjudgments, I believe we are making progress toward assuring that energy research and development and environmental goals are balanced.

Through legislation enacted over the past several years, we have given the Energy Research and Development Administration a fourfold mission: to develop all energy sources necessary to meet the needs of present and future generations, to increase the productivity of the national economy and make the Nation self-sufficient in energy, to protect the environment, and to assure public health and safety with regard to use of these energy sources. Through such legislation, we have explicitly mandated that technology research, development, and achievement of necessary environmental goals coincide.

As an internal mechanism for fulfilling its environmental responsibilities, ERDA has established environmental development planning in all its R. & D. programs. The EDP—the document which articulates the environmental goals of a program—is designed to insure that all technology development is accompanied by simultaneous environmental R. & D. These guidelines are intended to assure that all environmental goals are met by each stage of technology development, up through commercialization.

In addition, and equally important, many mechanisms are being used to insure coordination between ERDA and EPA on environmental matters. They range from interagency agreements to technical discussion by telephone. And, they include planning, field projects, and interagency reviews and meetings.

Through such guidelines and the cooperation I have mentioned, I think that the proper relationship between NSPS promulgation, new technology R. & D., and environmental goals can be maintained. However, I feel that it is our responsibility to monitor this interaction to assure that concerns from all parties on this matter are properly addressed.

Mr. MUSKIE. I think we can both agree that a way to both fulfill our energy R. & D. goals, and simultaneously insure protection of our environment is through interagency cooperation between ERDA and EPA on the matter of NSPS coordination and promulgation. Furthermore, I would stress that we look to EPA and ERDA to provide that cooperation, and to the Congress to insure its obligations.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, in the interest of saving time, because other Senators with amendments are not in the Chamber, I ask unanimous consent that the distinguished Senator from Nebraska be recognized in order to bring up his amendment out of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Does that leave the Senator from South Carolina in the same order?

Mr. MUSKIE. Yes.

UP AMENDMENT NO. 389

Mr. CURTIS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Nebraska (Mr. CURTIS), for himself and Mr. ZORINSKY, proposes an unprinted amendment numbered 389.

Mr. CURTIS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 107, line 11, insert the following new section 38, and renumber all succeeding sections accordingly:

SEC. 38. Section 211 of the Clean Air Act is amended by adding a new subsection (g) as follows:

"(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 producing gasoline which—

"(i) is only that fraction of the capacity of which was in operation or under construction on October 1, 1976, and

"(ii) 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) is owned or controlled by a refiner with a total combined crude oil or bona fide stock capacity (as determined by the Administrator) of 100,000 barrels per day or less.

"(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 gasoline production of the small refinery for calendar year 1976 (or, in the case of refineries under construction, half of the designed crude oil capacity) was (in barrels per day)	The applicable amount is (in grams per gallon)
5,000 or under	2.5
5,001 to 10,000	2.0
10,001 to 15,000	1.5
15,000 or above	(1)

[1] As prescribed by the Administrator.

"(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)(C) of this Act."

Mr. CURTIS. Mr. President, this amendment is sometimes referred to as the small refineries amendment. We have only one refinery in Nebraska. It is a very small one. Many of these small refineries would have to be totally rebuilt if they were going to comply with everything that might be imposed upon them. They do not have the capitalization to do that. At the same time, were they to be closed, the surrounding territory would suffer a great deal.

The distinguished Congresswoman from Nebraska offered an amendment, which was adopted unanimously, in connection with small refineries. My information is that it would meet with considerable opposition in the Senate. As a result, the language before the Senate is very much restricted. It is restricted to a refinery that has a crude oil or bona fide feedstock capacity, as determined by the Administrator, of 50,000 barrels per day or less and is owned and controlled by a refiner with a total combined crude oil or bona fide feedstock capacity, as determined by the Administrator, of 100,000 barrels per day or less.

It also grants this relief only until October 1, 1982; and it is further restricted in its subject matter over the House amendment.

It is my understanding that the distinguished chairman of the committee, who is in charge of the bill, has examined this amendment and is willing to accept it. In that case, I am ready to submit it and yield back the remainder of my time.

Mr. MUSKIE. Mr. President, I have examined the revised amendment proposed by Senator CURTIS on small refineries and am prepared to accept it.

The Environmental Protection Agency has promulgated lead phase-down regulations requiring a maximum average lead content for each refinery of 0.5 grams per gallon by October 1, 1979. This is a health-based regulation intended to insure a positive and lasting reduction in lead emissions to the ambient air. It is a result that will benefit the health of many people and I firmly support it.

However, this regulation places a heavier burden on smaller refineries. To meet that level a refinery must either produce large volumes of unleaded gasoline or reduce the lead content of leaded gasoline, or both.

Some small refineries may be too small to produce unleaded gasoline or to install the equipment to lower the lead content to the level in existing regulations on the same schedule as large refineries.

The amendment provides a temporary relaxation in the average lead requirement for small refineries for 3 years, until October 1, 1982. This will allow time for them to install the necessary equipment to produce gasoline with lower lead content or to make alternate plans.

EPA has authority to provide for a permanent standard for small refineries.

The amendment is sharply limited. It applies only to existing small refineries with 50,000 barrels per day or less crude oil capacity and that were in operation or under construction October 1, 1976. It only includes those that are owned by small refineries, with 100,000 barrels per day crude oil capacity or less. There are about 66 small refineries covered.

Altogether, these refineries produce about 5 percent of the U.S. gasoline. Thus, the net increase in national average lead levels will be moderate, from 0.5 grams per gallon up to 0.55 grams per gallon.

EPA is required to establish lead requirements for those refineries which produce more than 15,000 barrels per day of gasoline but have crude oil capacity of 50,000 barrels per day or less. According to a report by Sobotka and Company, most of these refineries have processing configurations similar to these in larger facilities and thus would be able to meet the lead requirements as easily as large refineries. The others could add the necessary facilities at a cost equivalent to adding them to large refineries. EPA could take these facts into account in setting lead requirements in this category.

For small refineries, the standards set by the amendment are reasonable. For those with 1976 gasoline production up to 5,000 barrels per day, 2.5 grams per gallon; for those between 5,000 and 10,000 barrels per day, 2.0 grams per gallon; and for those between 10,000 and 15,000 barrels per day, 1.5 grams per gallon.

Mr. STAFFORD. Mr. President, on behalf of the minority, we also are prepared to accept the amendment offered by the distinguished Senator from Nebraska.

Mr. CURTIS. I thank my distinguished colleagues very much, and I yield back the remainder of my time.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Who seeks recognition?

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 390

Mr. GRAVEL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alaska (Mr. GRAVEL) proposes an unprinted amendment numbered 390.

Mr. GRAVEL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 30, line 13, after "(6)(A)" insert the following: "Within six months after the enactment of the Clean Air Amendments of 1977, for each region subject to this subsection 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.".

On page 30, line 18, strike "recognized" and insert in lieu thereof "certified".

On page 30, line 23, after "local governments," insert "and in accordance with the determination under the first sentence of this subparagraph,".

On page 30, line 25, after "area" insert "or a State agency".

On page 32, line 10, after "title 23, United States Code," insert the following: "other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance,".

On page 32, line 11, strike "State" and insert in lieu thereof "air quality control region (i)".

On page 32, line 12, after "attained," insert "(ii)".

On page 32, strike lines 14 through 17 and insert in lieu thereof "(iii) where the Administrator finds after January 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by paragraph (2) of this subsection or that reasonable efforts toward submitting such an implementation plan are not being made (or, in the case of a revised implementation plan required by paragraph (3) of this subsection, after July 1, 1982).".

On page 32, line 23, strike all after "section," through page 33, line 10, and insert in lieu thereof "including any requirement for a revised implementation plan under paragraph (2) of this subsection, the Administrator shall not make any grants under this Act.".

Mr. GRAVEL. Mr. President, I submit today an amendment to the committee bill to cover two problems with the section on implementation plans, section 110(h)—intergovernmental relations and sanctions for failure to submit implementation plans in a timely fashion. Much concern has been expressed about the fact that the committee bill as it stands on these two questions is unduly harsh. The National Conference of State Legislatures strongly supports my amendment. The National Association of Counties and the National Governors' Conference both support my amendment as an acceptable compromise to the committee bill. I am of the opinion that the amendment will satisfy the vast majority of the concerns expressed to date.

Mr. President, for too long State and local governments have been faced with the problem the Federal Government dictating how State and local governments should interact, particularly with regard to areawide programs. My amendment would follow the example set by the Resource Conservation and Recovery Act of 1977 by allowing State and local governmental bodies to decide how best to address the questions of planning, enforcement, and implementation. State and local governments can sit down together to decide which level of government should handle which facets of planning. Similar decisions will be made with regard to enforcement and implementation. It gives me pleasure to encourage this form of governmental interaction without imposing upon the State and local bodies the ominous presence of the Federal Government. This portion of the amendment should continue to provide the appropriate level of government the ability to handle problems where they should be handled.

The second portion of my amendment deals with the question of sanctions for failure to submit implementation plans in a timely fashion. My amendment would not require penalizing the entire State for the failure of a single air quality control region. Only that region would suffer. But they would not suffer when incomes to those aspects of transportation funds that are related to safety, mass transportation, or improvement projects related to air quality improvement or maintenance. To penalize a region by deleting funds in those areas that are the subject of this act makes no sense. We need to encourage these three areas, rather than penalize regions violating the requirement for submittal of plans.

My amendment would do one more thing. Instead of requiring what some people are concerned would be the impossible, my amendment would set a deadline of January 1, 1979, unless a showing can be made that reasonable efforts are being made to submit an implementation plan. We should not penalize those regions that are in the process of submitting, or have made best efforts to submit, a plan, but have not yet done so for some legitimate reason. Thus my amendment offers an element of commonsense.

Mr. President, all this amendment does is to tighten up, quite properly, language that was accepted by the committee as punishment for the lack of adopting a plan. Rather than denying other moneys, we would deny highway moneys if an area did not adopt a plan.

The amendment that was accepted in committee dealt with an entire State, and this amendment would add technical language that would limit the punishment area to a quality control region itself, so that the whole State would not suffer punishment if it did not come up with a plan. That precise area would suffer punishment if it did not come up with a plan. Rather than deny all highways moneys, it was felt that it would be more proper not to deny moneys that dealt with safety, that dealt with mass transit; and it dealt, in point of fact, with improvements in air quality.

So we have precisely limited it to the moneys that have been designed for a region. If it did not come up with a plan, it would be moneys that they would be expending from normal highway transportation system funds, which obviously would be an occasion for further pollution. That precisely is what should be punished, and we should not use a broad brush, which is the way we had it defined in the proposal accepted by the committee.

I hope the managers of the bill will accept this amendment. It is technical in

nature. It does more certainly what should properly be done in this regard.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the National Conference of State Legislatures which supports my amendment, the National Association of Counties, which also supports my amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL CONFERENCE OF STATE LEGISLATURES, 444 NORTH CAPITOL STREET, N.W., WASHINGTON, D.C.
June 9, 1977.

Hon. MIKE GRAVEL,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR GRAVEL: On behalf of the National Conference of State Legislatures and as Chairman of its Committee on Natural Resources, I want to thank you and offer our strong support for your amendment to the transportation control planning provisions of S. 252.

We are especially pleased at the language allowing state and local governments to determine for themselves what level of government is best equipped to assume what responsibilities for transportation control planning and implementation. This buttresses one of the fundamental principles of the Clean Air Act: that the prevention and control of air pollution is "the primary responsibility" of state and local governments. State and local leaders are in the best position to know each others' strengths and weaknesses, and while the federal government may tell states and localities what must be done, it does them and the nation a desservice when it attempts to dictate how they must work together. Your amendment goes far to remove some of the vexing intergovernmental difficulties that have plagued transportation control programs in the past.

The National Conference is also pleased that you have seen fit to modify the funding sanctions for non-implementation and failure to comply with requirements for amending state clean air plans. In principle, NCSL is opposed to any sanctions, on the ground that they are often worse than the deficiencies they are designed to remedy. We also believe that sanctions are inequitable here, since the successive relaxation of auto emission requirements has already shifted a heavy burden onto state and local governments to implement more stringent transportation controls. We recognize, however, that reasonable men can argue that some sort of penalty is essential to assure that this difficult job is done, and we see your amendment as a thoughtful compromise.

By protecting safety, mass transit, and air quality-related transportation improvement projects, the amendment assures that the sanction does not impair funding for projects that are essential to the abatement of the pollution problem. The amendment also assures that an entire state does not lose funds for the failure of one metropolitan area to develop adequate controls. Finally, your amendment recognizes that the Administrator is in the best position to decide whether the sanction should be applied for a state's failure to make reasonable efforts to amend its clear air implementation plan.

For all these reasons, we appreciate your efforts to make such a politically and administratively nettlesome clean air requirement more workable. While we have reservations about the equity and reasonableness of funding sanctions generally, in the spirit of compromise we wish you every success in your efforts to secure your colleagues' assent to your important amendment.

Sincerely,

Senator BERNARD C. SMITH,
Chairman, NCSL Committee on Natural Resources, New York State Senate Committee on Conservation and Recreation.

NATIONAL ASSOCIATION OF COUNTIES,
Washington, D.C., June 9, 1977.

Re Clean Air Act Amendments S. 252.

Hon. MIKE GRAVEL,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR GRAVEL: The National Association of Counties would like to take this opportunity to express our support for the amendment that you are sponsoring to the transportation control provisions of the Clean Air Act Amendments S. 252.

We are especially pleased that the amendment provides language to ensure that states and local governments will have the opportunity to plan for and implement transportation control measures. This language is very important to remedy the past situation where the federal government has actually dictated transportation control programs for states and local governments to implement. Not only has this past policy been contrary to the spirit of sound intergovernmental cooperation but it has also resulted in strong protests and reactions from state and local officials who are forced to implement these measures.

Transportation controls will not be successful unless they are supported and prepared by the officials who are most intimately involved with the nature of the community.

We are also pleased that the amendment seeks to modify the funding sanctions that are now contained in the bill S. 252 for local governments which fail to implement or comply with the transportation control plans. NACo is opposed in principle to sanctions as a means of forcing local governments to comply with federal programs. We do not believe that sanctions will, in fact, force local governments to comply with federal programs. Instead, we favor positive incentives to assist local governments meet the mandates of the federal government. We believe the latter approach ensures more of a partnership between federal, state and local governments.

We are especially opposed to sanctions in this instance because we are being penalized for the failure of the automobile industry to comply with the statutory emission standards. Transportation controls are necessary to compensate for the excess pollution in our urban areas that results from dirty cars. Thus, not only are we being forced to compensate for the failure of the auto industry by instituting these transportation controls, but we are also being threatened with severe financial sanctions if we cannot comply with the measures in the time that Congress has provided.

We believe it would be more equitable for the Congress to first require the automobile industry to comply with the statutory emission standards before they begin discussing sanctions to local governments.

While we would favor total deletion of the sanctions, we do believe your amendment, by lessening the possibilities that the sanctions will be applied, strikes the most reasonable compromise possible.

We appreciate your efforts to assist us in this regard.

Sincerely,

CAROL SHASKAN,
Legislative Representative.

Mr. STEVENS. Mr. President, has the amendment been agreed to?

Mr. MUSKIE. I was about to indicate my acceptance of it.

Mr. STEVENS. I just wanted to ask a question, to make sure I understand this.

I have an amendment which would go partially in this direction. Do I correctly understand my colleague's amendment means that if you have an implementation plan, whether you implement it or not, there will be no loss of highway funds?

Mr. GRAVEL. That is right. Not even that, but if you are making an effort to arrive at an implementation plan, there will be no loss of highway funds.

There is a terminal effect: If you do not make any effort at all by 1979 to come up with a plan, if there are no best efforts, then we stick it to you in a very surgical way.

Mr. STEVENS. I am sure the Senator knows that Fairbanks has a problem, and it is a naturally caused problem. I do not know of any solution to it yet.

Mr. GRAVEL. The fact that we are thinking of a solution and working on one will give it umbrage, under this amendment.

Mr. STEVENS. But if we cannot find a way by 1979 to solve it——

Mr. GRAVEL. If we cannot find a way by the year 2000, we still will not get hurt.

Mr. STEVENS. This means that the State of Alaska will not lose those funds if we cannot solve the ice-fog problem?

Mr. GRAVEL. If that happens, I will come to the floor of the Senate and slash my wrists.

Mr. STEVENS. I do not want the Senator to slash his wrists. I just want to make sure that he will not slash my wrists.

[Laughter.]

Mr. MUSKIE. As a matter of fact, we will ask him to slash them on the streets of Fairbanks.

Mr. President, as I understand the amendment, it is a reasonable modification of the committee amendment. It still retains some sanctions for those jurisdictions which make no effort, undertake no effort, to put together implementation plans, and so I am ready to accept it.

Mr. BAKER. Mr. President, I would like to express my support for the amendment offered by Senator GRAVEL to eliminate the highway fund sanction for failure by a State to implement a transportation control plan.

I do not believe that the Federal Government should seek to enforce a clean air program under the threat of a disruption of another virtally important program. Transportation projects are essential to the economic health of the States—they improve the efficiency of the movement of goods and people, they serve the national defense and they provide substantial employment opportunities.

I think that it is important also that we undertake to enforce all necessary clean air strategies. But the sanction

retained by the Gravel amendment of a curtailment of Federal funds to State air quality agencies is in my opinion sufficient and certainly more appropriate.

I therefore shall vote for the Senator from Alaska's amendment.

The PRESIDING OFFICER. Is all time yielded back?

Mr. MUSKIE. I yield back my time.

Mr. GRAVEL. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment was agreed to.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the distinguished Senator from Pennsylvania (Mr. HEINZ) be recognized out of order at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 391

Mr. HEINZ. Mr. President, I send an unprinted amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes unprinted amendment No. 391.

Mr. HEINZ. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 130, after line 24, add the following new section:

"SEC. 50. The Administrator shall conduct a study concerning the effect on the public health and welfare of sulfate emissions from all sources. The Administrator shall report the results of such study, including a recommendation regarding the feasibility and necessity of regulating sulfate emissions, to the appropriate committees of Congress not later than two years after the date of enactment of this section."

Mr. HEINZ. Mr. President, I am concerned that the presence of sulfates in the air may present a health danger to the people of the United States. Sulfates are formed by a reaction of SO_2 with other substances in the atmosphere and are believed to have many of the same health effects as sulfur dioxide. It is estimated that sulfates constitute about two-thirds of the fine particulate matter which appears in the atmosphere and which can become lodged in the deep recesses of the lungs.

To date, no standards for sulfates have been set under the Clean Air Act. Two years ago, EPA decided that there was insufficient data on which to base a standard. Since that time, EPA has been involved in a program to develop information on the question of a sulfate standard. This amendment would require EPA to continue those studies and to determine whether a sulfate standard is necessary and feasible within 2 years of the date we enact the Clean Air Act Amendments of 1977.

I am particularly concerned about sulfates because the air pollution problems which they present could be aggravated by a national policy which encourages the use of coal. To the extent that we may be encouraging large sources to burn coal only to find that, as a result, they are discharging large amounts of these pollutants and treating a health hazard, we are being shortsighted. I am not saying that we should not encourage conversion to coal. I am saying that now is the time to look at the health impacts of sulfates and to make some determination as to whether, if, and how they need to be controlled. We should not wait several years to learn the dimensions of this problem.

In short, what my amendment proposes is that we open our eyes fully to any health problems that sulfates may pose. Only in this way may we judge the obstacles ahead and develop whatever means are necessary to surmount them.

Mr. President, this is a very simple amendment. It merely directs that within 2 years after the enactment of this section of the bill the administrator of EPA conduct a study concerning the effect on public health and welfare of sulfate emissions from all sources.

It is not a forcing amendment. It simply requires a study. Since particulate sulfate, composes something like two-thirds of all fine particulate matter that is currently being put into the air, since current technology in the removal of fine particulates is not effective, and since there is a considerable body of health opinion and research that says these fine particulates are potentially quite dangerous to the public health. I urge the adoption of this amendment.

I have discussed the amendment with Senator MUSKIE, the chairman of the subcommittee, and with Senator STAFFORD, the ranking minority member, and I understand they have no problem with it.

Mr. STAFFORD. Mr. President, I have examined this amendment offered by the distinguished Senator from Pennsylvania. For the minority I am prepared to accept this amendment.

The chairman of the subcommittee, the manager of the bill for the majority, will have to speak for himself, but I believe he is prepared to accept it also.

Mr. MUSKIE. Yes, Mr. President. This is a reasonable study. It is a subject about which we could use a great deal more knowledge than we have. I think the distinguished Senator from Pennsylvania has made a good case for it, so I am willing to accept the amendment,

The PRESIDING OFFICER. Is all time yielded back on both sides?

The question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, 100 Senators are awaiting action on the bill. A few Senators have amendments. Both sides are attempting to get their Senators to the floor to call up their amendments. So I hope that the cloakrooms will put out a hotline urging Senators who have amendments to come to the floor. The first Senator who gets to the floor and calls up his amendment can get action first on that amendment.

Today is Friday. It is 12:33 p.m., and I know how Senators like to stay in the evening on Fridays and, being one myself, I know how I like to stay on Friday evenings.

Of course, we still have Saturday. But if the Senate is to expedite its action on this bill Senators had better come to the floor and call up their amendments.

I would urge both cloakrooms to urge Senators to come to the floor as soon as possible.

I suggest the absence of a quorum, and I ask unanimous consent that the time be equally charged against both sides of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 392

Mr. KENNEDY. Mr. President, I send an amendment to the desk on behalf of myself, the Senator from Pennsylvania (Mr. SCHWEIKER), the Senator from New York (Mr. JAVITS), and the Senator from Rhode Island (Mr. PELL), and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, Mr. SCHWEIKER, Mr. JAVITS, and Mr. PELL, offers an unprinted amendment numbered 392.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment we dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 97 following line 8, insert the following new subsection:

"(f) (1) The Administrator shall conduct a study concerning the effects of 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.

"(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).

"(3) 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.".

Mr. KENNEDY. Mr. President, this amendment requires a study of particulate emissions from motor vehicles or motor vehicle engines as well as mobile sources not related to engine emissions, including tire debris, asbestos from brake linings, and so forth, and their effect on health and welfare. The report is to be submitted to Congress within 2 years.

As chairman of the Subcommittee on Health and Scientific Research, I want to call to the attention of the Senate the fact that the gaseous emissions of autos have been studied for years, and that their effects on the environment are becoming clearer. But particulate emissions have never been analyzed as they relate to the automobile.

I am referring now to brake linings containing asbestos; when the brakes wear out, a significant amount of asbestos enters the atmosphere. It is estimated that over 5,000 pounds of asbestos enter the atmosphere each year because of the automobile, and an additional 135,000 pounds of asbestos drop out on the roads each year. It is time to study the effects of this kind of auto pollution, and to begin to move to protect our environment and our health from the damage to public health which results.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate while the Senator is addressing himself to his amendment?

The PRESIDING OFFICER. The Senator's point is well taken. The Senate will be in order. Those conversing in the aisles will please retire to the cloakrooms.

The Senator may proceed.

Mr. KENNEDY. Mr. President, I have decided the thrust of the amendment. We have listed in the amendment the matters to be included in this study to determine their complete environmental and health implications. We believe that this information would be extremely helpful and useful. I hope the amendment will be adopted.

Mr. MUSKIE. Mr. President, I have had the opportunity to study this amendment. I think it is a proper inclusion, and express my appreciation to the Senator from Massachusetts for bringing it to our attention. I think his approach is reasonable, and that the amendment would be an addition to this bill. I am delighted to accept it, and yield back the remainder of my time.

Mr. KENNEDY. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

UP AMENDMENT NO. 393

Mr. KENNEDY. Mr. President, on behalf of myself, the Senator from Pennsylvania, (Mr. SCHWEIKER), and the Senator from Rhode Island (Mr. PELL), I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, Mr. SCHWEIKER, and Mr. PELL, proposes an unprinted amendment numbered 393.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 130, between lines 22 and 23, insert the following:

SEC. 49. (a) Not later than 12 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.

(b) Not later than 18 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 subsection (a) entered the environment and thereafter human tissue.

(c) The Administrator, in consultation with the 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 relationship 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 committees of the Congress.

On page 130, line 23, in lieu of "49" insert "50".

Mr. KENNEDY. Mr. President, this amendment requires that within a year, the EPA publish a list of all chemical contaminants which result from environmental pollution and make their way into human tissue—blood, urine, breast milk, or any other tissue.

This list would be made widely available to the public, and would include the levels at which these chemicals appear in human tissue, and the number of cases found.

Then EPA would publish an explanation of where the chemicals come from, and how they make their way into the human body. This would enable people to take steps to minimize their exposure to these chemicals.

Finally, EPA, with the National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Sciences Research and Development, would conduct a study to show the correlation between exposure to these chemicals and the levels at which they appear in human tissues. This is, in essence, an effort to show the relationship between environmental pollutants and their appearance in human beings.

More and more chemical contaminants resulting from environmental pollution are finding their way into the human body. Nursing mothers who have contaminants in their milk pass them on to their infants. Many of these contaminants are carcinogenic. Asbestos finds its way into the lungs of unsuspecting Americans.

We ingest these chemicals in our food, drink them from our water, breathe them from our air. And they are accumulating in our bodies, increasing the risk of serious illness and disability. We are paying for past sins. We will pay for them for many years. Our children and our grandchildren will pay for our current sins. Parts of the food chain are contaminated and will remain so for many years, even if pollution stopped today.

In the course of our hearings held by my Subcommittee on Health and Scientific Research just this week, we have seen that a number of the substances which were banned 8, 9, or 10 years ago are still being ingested. They remain in the body, mostly in the body fats of individuals, and will probably remain there for the course of a lifetime.

One of the interesting aspects is that one of the ways for women to get rid of contaminants is through breast feeding their infants, with important implications for the health and well-being of those infants.

This amendment will let people all over the country know what is happening to their bodies. They will learn the sources of contamination. We have seen that some parts of our country individuals have anywhere from 40 to 50 times the amount of these contaminating substances in their bodies as compared to individuals in other parts of the country. This has been the finding when the Southeastern part of our Nation is compared to the Northeast. Quite clearly, this results from the extensive use of pesticides, herbicides, and insecticides, in the major agricultural regions of this country.

We will learn as a result of the provisions of this amendment, Mr. President, the sources of the contamination and, I hope, when people learn of this, they will have a chance to reduce their exposure.

Finally, the bill will allow us to better understand and prove the nature of the direct effect these contaminants have on the human body—so we can predict the results of certain exposures—so people in each city will know what is likely to happen to them and their children with the level of pollution they are exposed to on a daily basis:

SUBSTANCES FOUND IN THE HUMAN BODY BECAUSE OF ENVIRONMENTAL POLLUTION

1. Radioisotopes—result of nuclear exposure, fossil fuel burning.
2. Carcinogens coating fossil-fuel-burning residues—benzopyrent, methylcrisein.
3. Asbestos—air.
4. H_2O—pesticides, PCBs, kepone, etc., PBBs.
5. Food—aldrin, heptachlor, endrin, oxychlordane, dieldrin, heptachlor epoxide, and mirex.

It is clear to me that to begin to collect and correlate this information, to tie it into its sources, and to get wide distribution of this information, will be ex-

tremely important and useful to our citizens in making decisions with regard to their health.

I hope the Senate will adopt this amendment. I believe its implications are profound. I believe it will have an extremely positive impact on the national effort to remove contaminants from our environment.

I want to mention an additional point Mr. President. We are going to see an explosion in the number of new chemicals in our society. In the hearings we held earlier today, there was testimony from the Director of the EPA, that under the Toxic Substance Act anywhere from 2,000 to 3,000 new chemicals come on the market each year. EPA has been given approximately $10 million to conduct tests on these chemicals. It costs about $250,000 to do one test on one substance, let alone the 30,000 different chemicals which are already on the market.

New chemicals are pouring into the market. They have had, and will have, broad implications insofar as they remain in the human body and profound implications on the public health as a result. It seems to me that we must begin to collect this information and to understand it better. This is very much in the consumer's interest and has important implications on the success of our effort to improve the health of our citizens.

Mr. RANDOLPH. Will the able Senator yield?

Mr. KENNEDY. I yield.

Mr. RANDOLPH. The mention of pesticides and the other chemicals which increasingly are part of our life in one way or another gives me the opportunity to talk candidly to a fact. The Senator from Masachusetts (Mr. KENNEDY) is chairman of the Subcommittee on Health in the Committee on Human Resources and is knowledgeable in this field.

So very often, certain types of medicine are developed to be used by human beings to cure a certain ailment. Because of those medicines we may be able to help that ailment, that one. But in so doing we may have certain side effects in the human body. In a sense, that is what the Senator is saying today. The ramifications are very widespread. I commend the Senator for his presentation of this amendment.

Mr. KENNEDY. I thank the Senator.

Mr. MUSKIE. Mr. President, those who resist regulation and environmental laws constantly suggest, and sometimes state, that the requirements exceed the true requirements of health, so we need a constantly expanding body of knowledge and understanding of the effects of environmental pollution on health.

The distinguished Senator from Massachusetts has a perspective on those effects from the point of view of his responsibilities which are different than ours. I appreciate the fact that he has taken an interest to modify the environmental laws in order to make them more sensitive to his particular concerns. For that reason, I am delighted to have the amendment and, of course, I am willing to accept it. I yield back the remainder of my time.

Mr. KENNEDY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Is all time yielded back.

Mr. KENNEDY. Before I yield back all my time, I ask unanimous consent to include the senior Senator from New York as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

All time has been yielded back. The question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment was agreed to.

UP AMENDMENT NO. 394

Mr. CULVER. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa (Mr. CULVER) proposes an unprinted amendment No. 394.

The legislative clerk proceeded to read the amendment.

Mr. CULVER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 129, after line 16, insert the following new section and renumber succeeding sections accordingly:

"SEC. . 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."

THE NEED TO CONTROL ODORS

Mr. CULVER. Mr. President, this amendment addresses a major air quality problem facing Iowa and other States throughout our Nation. Over the past decade the public has become increasingly aware of malodors generated by industrial and other operations, and this intolerance has been expressed by a mounting number of complaints to local and State officials.

The problem of offensive odors has become a particularly serious consideration in Iowa. A growing number of complaints has been received by the Iowa Department of Environmental Quality, IDEQ, regarding unpleasant odors from various sources. For instance, during the 12-month period from June 1, 1975 to June 1, 1976, over 500 complaints were made by Iowans about the need to control odors. I ask unanimous consent to have a letter from Mr. Larry Crane, director of IDEQ, supporting the control of odors made a part of the RECORD at the conclusions of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Odors may not necessarily be considered as lethal or hazardous as toxic air pollutants, but they do seriously interfere with our welfare. Odors can simply be disruptive of our daily lives. They can be so offensive as to force people to move from one location to another, and they can cause adverse health effects. In addition, odorous emissions are especially annoying. They follow you inside, travel great distances from the original source, and make their presence felt at much lower levels of concentration than other pollutants.

Malodors are a serious problem and do indeed command the attention of our communities. As a matter of fact, they have in some respects taken over as a prime indicator of poor air quality in our society. Before we began to control the emission of particulates from stationary sources under the Clean Air Act of 1970, black smoke billowing from industrial stacks clearly indicated to the public the presence of lethal and harmful air pollutants. These early signs of air pollution are now disappearing or at least being reduced, and it is no longer so easy to determine by sight whether or not air quality is being degraded. An individual now must rely on his other senses to make this determination. Offensive odors are as representative of air pollution as dirty smoke.

There is no doubt that the number of complaints to local and State authorities have stimulated interest in odors. Yet, to date, little has been done by the Environmental Protection Agency, EPA, to determine what levels of odors are acceptable to the public, and therefore what controls and appropriate levels of control costs are necessary.

Mr. President, the amendment which I am proposing today would direct EPA to do what the Public Works Committee thought the Agency would do in 1970. During the committee's consideration of the Clean Air Act 7 years ago, it understood that EPA was planning to draft and promulgate a series of air quality criteria and appropriate emission standards relating to the control of objectionable odors. Reasonable progress, however, has not been made in this regard by the Agency. This amendment would simply require the EPA to study and report to the Congress not later than January 1, 1979, on the effects on public health and welfare of odorous emissions and the technology or other measures available for controlling foul odors. In addition, the required report would include an evaluation of whether ambient air quality standards or criteria should be published and what other strategies are available for abating odorous emissions under the Clean Air Act.

I think we can all agree, Mr. President, that not every odor source is a nuisance and needs to be regulated. Though malodors are a serious problem, we must have the appropriate information base on which to control them. We must first obtain sufficient sensory data on which

to base odor regulations. We must first determine what really constitutes an odor problem. We must first obtain reliable information and sensory data concerning the effectiveness of various standards and other control strategies. Odors are a complex issue and without such information, necessary and effective standards and controls will be impossible to implement.

Currently there is no comprehensive Federal program controlling odorous pollutants, and this responsibility has been primarily left to the States and local governments. Unfortunately, States do not have the necessary resources to promulgate effective standards and regulations for reducing the effect of offensive odors. In most instances, such State regulations have been based on subjective judgments and not on scientific criteria. This amendment would enhance our efforts to control foul odors from industrial, manufacturing, and other operations. It would assure that we strive to improve our air quality by controlling odor nuisances.

As a member of the Senate Committee on Environment and Public Works, I believe its distinguished chairman (Mr. RANDOLPH) and the chairman of the Environmental Pollution Subcommittee (Mr. MUSKIE) have devoted many hours to developing a comprehensive and effective bill. I have discussed this amendment with Mr. MUSKIE, and I believe it takes an important step forward in improving air quality. I am hopeful it will be approved by the Senate.

EXHIBIT 1

IOWA DEPARTMENT OF ENVIRONMENTAL QUALITY,
June 10, 1977.

Hon. JOHN C. CULVER,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR CULVER: Your office has informed me that you are considering introducing an amendment to the Clean Air Act that would require EPA to study ambient odors. The purpose of this letter is to affirm my support for that action and to provide you with some information on the extent to which odor pollution affects Iowans.

This Department records all complaints that are received from the public. During the period July 1, 1975 through June 30, 1976, 540 complaints about operating or proposed odor sources were received.

The frequency and sincerity of the complaints about odor pollution caused the Air Quality Commission to go to public hearing in 1973 with proposed odor regulations. These regulations were roundly opposed because of a lack of uniform standards which could be equitably applied. Again due to public complaints, in 1975 the Air Quality Commission appointed an Odor Control Advisory Committee composed of representatives with diverse points of view (e.g. livestock producers, industries, members of the public previously involved in litigation over odor pollution). The recommendations of this committee eventually led to odor control regulations in Iowa, however the lack of scientific odor standards, the lack of design criteria for anaerobic lagoons and other common odor sources, and a lack of study into the physiological effects of odors will inhibit any state or local control efforts. These problems defy solution through citizen involvement, as we have tried through the Odor Control Advisory Committee.

In many ways the good intentions of state or local government is not enough to lessen the impact of odor sources on the environment. A federal approach to developing odor control methods and enforcement standards is a necessity for many odor sources common to various regions of the country. As has been proven with the Federal Water Pollution Control Amendments of 1972 and the Clean Air Act of 1970, environmental cleanup is a massive task where the resources commitment of the federal government is essential for progress to be made.

Efforts in Iowa point to the fact that state government is prepared to assist in preventing odor problems, and where necessary, getting existing problems resolved. What is missing now is the necessary resources and research.

We support any efforts you can make to assist state and local governments to solve the numerous serious odor problems which we face continually in Iowa.

Sincerely,

LARRY E. CRANE,
Executive Director.

Mr. MUSKIE. Mr. President, I welcome this amendment. I also feel strongly that we have not done all we should to deal with the environmental and even the health effects of unpleasant objectionable odors. I know I have encountered such odors which I am convinced must have an unfavorable health impact because of their noxious nature. We have been so concerned with other health effects and environmental effects that we have not really focused on these. I do welcome this amendment. I am happy to accept it. I understand my distinguished friend on the Republican side (Mr. STAFFORD) is willing to accept the amendment. I yield back the remainder of my time.

Mr. CULVER. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

UP AMENDMENT NO. 395

Mr. BAKER. Mr. President, I have an amendment at the desk which I call up and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER) proposes an unprinted amendment numbered 395:

At the end of line 18 on page 110 strike the period and add the following: "; provided that in establishing an emission limitation for coal-fired steam electric generating units subject to the previsions of Section 118 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.

Mr. BAKER. Mr. President, I ask unanimous consent that the distinguished junior Senator from Tennessee (Mr. SASSER) and the distinguished senior Senator from Kentucky (Mr. HUDDLESTON) be added as cosponsors to amendment No. 395 to S. 252.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, this is essentially the same amendment I offered in committee.

The PRESIDING OFFICER. If the Senator will suspend for just a moment, the Chair would advise that there are 30 minutes to a side.

Mr. BAKER. I thank the Chair.

Mr. President, I might say for the Members of the Senate that I will use far less than that, and I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator may proceed.

Mr. BAKER. Mr. President, this is essentially the same amendment I offered in committee—which was not adopted—with a modification.

The modification further limits the application of the amendment to those situations where construction of the tall stack commenced prior to February 8, 1974.

The background on this, Mr. President, as my colleagues on the Environment and Public Works Committee know, is that the whole question of compliance requirements during the time the TVA was building large powerplants and later tall stacks was in a state of confusion.

EPA had held that dispersion enhancement systems, which is the technical name for tall stacks, was appropriate with the Clean Air Act. Others held it was not.

It was not until when the Fourth Circuit Court of Appeals in February, 1974, ruled that section 110(a) indicated congressional intent not to permit dispersion enhancement as a final compliance tool that the situation was finally clarified.

Mr. President, at that time the TVA had gone ahead with what it thought was the lawful and approved method of emission control and had done so at their expense.

This amendment, Mr. President, simply would permit those cases where a construction contract was entered into in reliance on EPA's regulation that had been previously promulgated that tall stacks would be taken account of by EPA as they approve or disapprove State implementation plans and, finally, the program that must be employed by an affected utility, in this case the Tennessee Valley Authority.

It simply requires that the entire stack height be taken into account in setting emission rates, at plants like the Kingston steam plant in Tennessee.

Mr. President, this amendment would permit the States to take into account the entire stack height at old powerplants placed in service before July 1, 1957.

The amendment I send to the desk is a modification of the amendment I offered in committee.

The concern in committee was that the proposal was inconsistent with the requirement for emission reduction long advocated by the committee. The requirement for emmission reduction through continuous controls, while it derives from section 110(a) of the Clean Air Act of 1970 has undergone a rather complex evolution in EPA regulations. The situation was only clarified in Feb-

ruary of 1974 when the Fourth Circuit Court of Appeals ruled that section 110 (a) indicated an intent not to permit dispersion enhancement as a final compliance tool but rather to require the actual elimination of pollutants from the smokestack.

While I agree entirely with that interpretation of section 110—as I had stated during hearings on the clean air program in 1972—two facts are clear: First, it is expensive to put such continuous controls on old powerplants; and second, some powerplants had undertaken to install tall stacks in reliance upon the indications by EPA, initially that such facilities would be accepted.

The amendment I now offer states that where a powerplant is older than 20 years and where there was a contract awarded for construction of the tall stack prior to February 8, 1974, as it had been at the Kingston steam plant of TVA, the entire stack height may be used in determining the emission rate for the plant.

Obviously where an enforcement order had been issued based upon an emission rate not taking into account the full stack height it would be modified to reflect this amendment's requirement that the entire stack height be taken into account.

Mr. President, I reserve the remainder of my time.

Mr. MUSKIE. Mr. President, as the distinguished Senator from Tennessee, the minority floor leader, has pointed out, the amendment in the broader form was rejected in committee, not that the committee was unaware of the inequities of the particular situation which concerned the Senator, but we simply did not want to trigger a policy of widespread approval of tall stacks as a method of continuously controlling pollutants.

This particular case had equities of its own. The amendment has been modified to very narrowly focus on those equities. The modification has been worked out with the EPA in order to insure that the application is very strictly limited.

Under those circumstances, I am prepared to accept the amendment.

Mr. President, I yield back the remainder of my time.

Mr. BAKER. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MUSKIE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 396

Mr. DOLE. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE), for himself, Mr. CURTIS, Mr. YOUNG, Mr. HATCH, Mr. HAYAKAWA, Mr. TOWER, Mr. ZORINSKY, Mr. FORD, Mr. BUMPERS, Mr. BARTLETT, Mr. PEARSON, Mr. PERCY, Mr. DOMENICI, Mr. LUGAR, Mr. BELLMON, Mr. HELMS, Mr. MCGOVERN, Mr. ANDERSON, Mr. MELCHER, and Mr. HUMPHREY proposes an unprinted amendment numbered 396:

On page 41, between lines 11 and 12, insert the following:

(b) Section 111 of such Act is further amended by adding an additional new subsection as follows:

"(g) 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 2.5 million bushels.".

The PRESIDING OFFICER. The Senator from Kansas has 2 hours on the amendment, with 1 hour to a side.

Mr. DOLE. Mr. President, I appreciate that information, though I think we can agree on the amendment in a short time.

Mr. President, this is an amendment that the distinguished Presiding Officer (Mr. FORD) is concerned about, as is his colleague from Kentucky (Mr. HUDDLESTON), and many other Members of the Senate who have what we refer to in our States as country elevators.

There have been no problems with air pollution in these rural areas and the amendment will make certain there is no future effort by EPA to initiate some broad regulation that might impact on these country elevators. The amendment is offered in that spirit.

It is somewhat different from the amendment offered on the House side, which is part of the House version, which flatly exempts all grain elevators with storage capacity of 2½ million bushels or less.

The wording is somewhat different, but I think the intent is pretty much the same.

We are not suggesting that large terminal facilities be exempt as there may be some need for such regulation. We are not suggesting there should not be, if there is a need.

But the Administrator, in his definition of a country grain elevator as provided in this amendment, should consider primarily the origin of the grain received by grain elevators. For instance, an appropriate definition could be those elevators which receive 85 percent or more of their grain from producers—or in times of surplus reconcentration of CCC grain. In Kansas, we have 17 country elevators which receive nearly all of their grain receipts from producers and yet their storage capacity is in excess of 2 million bushels—three country elevators have a 2 to 2½ million bushel capacity; eight country elevators have a 2½ to 3 million bushel capacity; and four country elevators have in excess of a 3 million bushel capacity. Nearly all grain received at these elevators is direct from producers.

Some of these large country elevators—11 of the 17—are federally licensed warehouses and are often confused with terminal facilities.

The best definition, therefore, would be one based on the origin of the grain.

In other words, if it is delivered by the producer to the elevator, that would indicate it is a country-type elevator. Perhaps a percentage based on the origin of the grain, such as the one I mention—that 85 percent of more of the receipts come from producers would be the proper level.

If an elevator would meet the percentage, it could be defined as a country elevator. The Administrator, on this basis, might want to exempt a country elevator with stroage capacity in excess of 2.5 million bushels. Such an elevator should be exempt as long as it would not cause a pollution problem in that rural area.

Some terminal elevators receive grain from producers; however, the differentiation is obvious in that the percent of grain they receive from producers is incidental to the volume received from other sources.

Mr. President, I have cleared this modified version of the original amendment with the original cosponsors and it is acceptable. I hope the intent is clear.

Mr. DOLE. Mr. President, this amendment would alleviate the disastrous economic impact of the regulations proposed by EPA on January 13, 1977, upon country elevators and the farmers they serve.

The regulations, as proposed, would have a costly impact on the U.S. grain marketing system.

I am concerned especially about the added marketing cost for each bushel of grain that will result from these new EPA regulations.

The requirements will not only affect new facilities as they come in line, but will also require expensive renovating of existing facilities. Economists, acquainted with grain marketing, estimate the costs added by the EPA proposed requirements to be as much as 6 cents for each bushel put through a facility. I do not believe that the farmers should carry this burden.

The installation of filter systems on all existing country elevators in conformance with the EPA regulations would require a total investment of $600 million to over $1 billion, depending on the type filter installed, and annual operating costs of $130 million to $235 million. And this is just one of the costly requirements.

The Council of Wage and Price Stability on April 4, 1977, reported that transportation delays alone occurring in moving grain from farm to port would cost $67 million annually if the EPA regulations are implemented as proposed. These costs associated with transportation delays are in addition to the capital investment costs and would be incurred because of a requirement that each rail car be uncoupled separately and dumped inside a totally enclosed building.

Regulations requiring control equipment on all elevators will result in the closing of a significant number of country elevators, particularly those with small storage capacities. EPA acknowledges this in their standards.

And what do we gain from these extra costs? The proposed EPA regulations would effect less than a 4-percent reduction in grain dust emissions according to EPA's own estimates.

This added cost to the EPA regulations will increase the marketing costs of this country's basic raw food commodity and this Nation's greatest export commodity. Higher marketing costs would make us less competitive if passed forward. If passed backward through the system, which is inevitable, they will lower prices which are already disastrously low. My amendmnt will save marketing costs for the country elevators located in rural areas and small towns and the farmers they serve. The costs required by the proposed EPA regulations simply cannot be afforded by the farmers.

The EPA requirement comes at a time when small businessmen and grain farmers are having an especially difficult time of staying in business.

Farmers who a few years back were receiving over $4 per bushel for their wheat are now receiving less than $2. The marketing system cannot bear these extra costs.

I do not believe the American farmer and consumer are willing to pay these additional costs for such an ineffectual EPA effort. Thus, we should be prudent in reducing the economic impact of the proposed regulations. I have no objections to developing more reasonable regulations to reduce dust in the terminal and export facilities that handle much larger volumes of grain. It is my understanding that the EPA did not initially intend to include the country elevators. This amendment would require that any regulations promulgated by the Administrator of EPA applicable to grain elevators shall not apply to country elevators, as defined by the Administrator, which have a storage capacity of less than 2.5 million bushels. Thus, country elevators would be exempt but not the larger terminal elevators or export point facilities.

I ask your support on this needed amendment to protect our country elevators from going out of business or having tremendous economic burdens thrust upon them and the farmers they serve, by EPA.

Mr. President, I ask unanimous consent to have printed in the RECORD numerous telegrams supporting the amendment, as well as a letter from the Environmental Protection Agency.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Telegram]

FARMERS UNION GRAIN TERMINAL ASSOCIATION,
St. Paul, Minn., June 10, 1977.

Senator ROBERT DOLE,
Dirksen Senate Office Building,
Washington, D.C.

As the cooperative marketing agency for 600 country elevators in Minnesota, North Dakota, South Dakota, and Montana we support Dole amendment to Clean Air Act exempting small local elevators as a common sense aid to these indispensable links in the agricultural economy because prohibitive expense and distances from urban centers argue for this relief.

B. J. MALUSKY,
President.

UNION EQUITY COOPERATIVE EXCHANGE,
Enid, Oklahoma, June 9, 1977.

Senator ROBERT DOLE,
U.S. Senate,
Washington, D.C.

On behalf of our 228 member elevator associations operating 423 elevators, we support the Dole amendment to the Clean Air Act, exempting 2.5 million bushel capacity elevators from the EPA regulations.

GERALD FRAZIER,
Executive Vice President and General Manager.

[Mailgram]

FARMERS GRAIN DEALERS ASSOCIATION,
Des Moines, Iowa, June 9, 1977.

Senator ROBERT DOLE,
Senate Office Building,
Washington, D.C.

Farmers Grain Dealers Association is in favor of exempting those country grain elevators with 2½ million bushels storage capacity or less.

CHARLES W. HANSON,
Executive Vice President.

IOWA GRAIN AND FEED ASSOCIATION,
Des Moines, Iowa, June 9, 1977.

Senator ROBERT DOLE,
Capitol One, D.C.:

Iowa Grain and Feed Association supports the Dole amendment which states that elevators with a capacity of 2.5 million bushels or less and a total receiving leg capacity of 20,000 bushels per hour are exempt from the Clean Air Standards Act.

ROBERT L. SKINNER,
Executive Vice President.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., June 7, 1977.

Hon. DICK CLARK,
U.S. Senate, Washington, D.C.

DEAR SENATOR CLARK: This is in response to your letter of June 6, 1977, in which you inquired about EPA's plans to regulate grain handling facilities.

Earlier this year, EPA proposed a regulation to limit the emission of air pollutants from new grain handling facilities pursuant to Section 111 of the Clean Air Act. We have received a large number of comments on the regulation many of which indicate that the proposed regulation will impose an unreasonable burden on the owners and operators of country elevators.

I have reviewed the proposed regulations and the public comments and have concluded that, in general, country elevators are not appropriate for inclusion under the new source performance standard. Country elevators tend to be small, economically marginal facilities which do not constitute an air pollution problem which requires Federal regulation. *Accordingly, I have directed that the regulation be redrafted to provide an exclusion for country elevators.*

Upon completion of our analyses, I will decide whether this exclusion should be applied to all country elevator or whether there is a small number of the very largest country elevators which should continue to be covered. While I have not determined the exact size of country elevators to be excluded, I can assure you that only the very largest, if any, will be subjected to Federal regulations.

The exact wording of the revised regulation has not been developed. Many comments have suggested that neither storage capacity nor receiving leg capacity is appropriate for use as a basis for excluding country elevators. A storage capacity limit alone would tend to exclude high throughout terminal facilities, while including some country elevators which would be less able to finance necessary control equipment. At this time, it appears that some combination of storage capacity and receiving capacity cutoffs may be the most appropriate. Another alternative being considered is the exclusion of facilities which do not have the capability to receive rail shipments. This would eliminate virtually all country elevators from consideration, but could also exclude some processing facilities.

A revised draft regulation will be prepared and circulated to interested members of the public and the Congress for comment on the revised coverage and stringency of the standards. After reviewing those comments and consulting with Congress and the affected parties on any remainin gareas of concern, I will promulgated a final regulation.

In the light of my decision to exclude most, if not all, country elevators and our plans for further consultation with the public and the Congress, I believe that the proposed amendment to the Clean Air Act is unnecessary.

Sincerely yours,

DOUGLAS M. COSTLE.

Mr. HATCH. Mr. President, I support the amendment offered by Mr. DOLE to exempt grain elevators of less than 2.5 million bushel capacity. In Utah and in most of the Nation, our small operating grain elevators are located in rural areas. Trucks on dirt roads and tractors and other machinery running in the fields put dust in the fields every working day. There has been no evidence developed that grain dust emissions pose a threat to health or welfare. Yet EPA regulations have established what are called opacity standards for measuring these emissions. These emissions are measured visually with special glass panes and charts, instruments that have a 7½-percent inherent margin of error. Now the EPA has a standard that requires 0 percent capacity. This means that there can be virtually no visual grain dust emissions. The people I have talked to who are knowledgeable in the operation of grain elevators indicate that at considerable expense a 5- to 10-percent opacity level can be achieved. The state of technology is not advanced enough at this point to achieve 0 percent opacity; and even if it did exist, there is no evidence justifying these costs. The subjectivity of these measurements is further increased and made more complicated by a number of factors: the type of grain you are dealing with, the dust characteristics, the color and density of background against which the observations are made and meteorological conditions such as humidity, wind velocity, and direction.

There are some other problems created by these EPA regulations that place an especially onerous burden on the small grain elevator operation. The cost estimates developed by the National Grain and Feed Association place the added cost in bringing all elevators into compliance with EPA regulations would be 6 cents a bushel. However, this is an average cost increase; it is very likely that the impact on small operations

would be substantially higher. This is because small houses have far less capacity over which to spread the necessary control expenditures. A study of one situation in Utah by the Farmers Grain Cooperative in Ogden, Utah, indicates the real danger of escalating costs for small operations in their association under the EPA guidelines.

At the end of my speech, I will insert in the RECORD a letter from the executive vice president of this organization that contains the details on how these substantial additional costs will be incurred. Because of the nature of agricultural markets it is virtually impossible for the members of the Farmers Grain Cooperative and other similar operators and growers to pass on these increased costs. The costs are passed the other way, back to the growers, people who are already operating on reduced income from the depressed price of wheat.

There are several other results that will occur from the regulations. These rules could substantially curtail the use of multiple truck loading spouts in small operations. A typical small house has one spout in a shed, and multiple loading spouts on the outside for utilization during busy operations periods. This would not be the same problem for most terminals and subterminals, because they have shedded loading areas. The small operations will either have to incur great expense in expanding their sheds to cover the outside spouts; or they will simply abandon use of the outside spouts, and go to utilization of the one spout in the shed. After the operation mills the feed grain for shipping, it is loaded from the spouts into trucks or waiting box cars on an adjacent railroad spur. EPA regulations will require expensive box car loading machinery to contain the grain dust emissions. This could cause an increased use of hopper cars, although there is a shortage of cars available in the West. However, it would probably be necessary to deadhead, or send the hopper car back empty, whereas box cars go back loaded. This uneconomic situation would have to be covered in higher rates for the hopper cars.

The implication here is that EPA regulations will either substantially increase costs or reduce and significantly slow down distribution, or both. And we have to ask ourselves for what benefit? There is no proven health hazard, and the site of grain dust in rural areas is a pleasant site to my constituents in Utah. It indicates productive work in progress, plentiful supplies of essential grains. There is no significant impingement on visual values. Rather it offers interesting clarity and contrast to most of the clean tranquil panorama in rural America. I ask my fellow Senators to support this amendment as a way to protect the small, hardworking grower and mill operator from irrational, uneconomic Government regulation.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter to which I referred.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MAY 5, 1977.

Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, N.C.

Attention: Mr. Don. R. Goodwin.

The following information is indicative of the prohibitive cost of satisfying EPA standards:

Accurately estimating costs for each country elevator is complicated and requires at least preliminary engineering design for the specific plant. To arrive at an approximate cost we assumed a 300,000 bushel concrete plant with one leg, one truck dump, a typical headhouse and distributor system, one loadout facility to accommodate boxcars and hoppers, a truck loadout spout over the unloading pit to save building a separate shed, a discharge screw conveyor under the bins delivering to the receiving pit, and appropriate floor sweeps. We used typical belt speeds, cup sizes, boot and head pulley dimensions, garners, scales, bin vent controls, distances and overall elevator layout and provided for a minimum of concurrent operations (e.g., simultaneous truck receiving and boxcar loading) to simplify air flow. This quick study came up with two baghouse systems and appropriate fans, motors, duct work, pit baffles, sheds, and a dust holding tank. Air flows included the EPA prescribed ventilation rates in cubic feet per minute and industry recommendations where EPA did not give specifics. Cost estimates are based on recent vendors' data, standard cost estimating guides and scaled up project data. The total cost estimate for this model system is $208,000! It isn't all that fancy either. This figures out at $7.25 per CFM of dust control air flow. Systems for some elevators will cost more; some less. Electrical power to operate this dust control system (based on current Washington Water Power rates) would cost about $3,526 per year figuring a one month receiving period, some farm storage put-through during the winter, and loading out the house capacity over the season. If these plant additions were financed at 8% interest for five years, the annual repayment cost would be over $52,000 per year. Add on the added power bill for about $3,500 a year and the added cost of handling 385,000 bushels (300 M primary receipts + 85M farm storage) would be 14½¢ per bushel not including maintenance costs on the dust facilities or added costs due to less efficient handling operations. Combined with similar or added costs for the other elevator operations required from the field to the final terminal elevator and delivery to final destination, these regulations could add 30¢ a bushel to the farmers' marketing costs. This depends on whether the grain moves through a subterminal or directly to the export position. Most terminals and sub-terminals already have more sophisticated dust control systems than country elevators. Precise estimates are also frustrated by EPA's invalid requirements for barge loading. Suffice it to say, the National Grain and Feed Association's projection of 6¢ a bushel is most conservative.

Sincerely,

W. G. CROSS,

Executive Vice President and General Manager.

Mr. HART. Mr. President, on behalf of the committee, we have examined the amendment proposed by the Senator from Kansas, and for the committee, the Senator from Colorado is prepared to accept it.

As with other sources of pollution and emissions, grain elevators should be judged on the needs of protecting public health and safety. It does seem reasonable, under the facts put forward by the Senator from Kansas, that there are some smaller elevators in rural areas that should be exempt from the regulations. These smaller elevators, so-called country elevators, are a point of first receipt of grain from the producers. Most of them are very small and have limited throughput, with turnover only once or twice a year. Consequently, they are less of an air pollution problem than the larger terminal elevators which handle grain more often and have higher emissions.

The EPA is in the process of revising proposed regulations for grain elevators, and it is our understanding that it has concluded, in general, that these so-called country elevators are not appropriate for inclusion under the new source performance standards. This amendment will not exclude the country elevators or the terminal elevators and is thus, I think, a reasonable measure, and we are prepared to accept it.

Mr. STAFFORD. Mr. President, for the minority on the committee, I concur in what the acting manager for the committee has just said.

Mr. DOLE. Mr. President, I appreciate the comments of the distinguished Senators from Colorado and Vermont, the managers of the bill.

Based on conversation with EPA officials during the past couple of years—as well as recent conversations, EPA will agree that it is a reasonable amendment. I hope the intent is clear that we only want to exempt those grain elevators that do not endanger the rural environment. When a large grain elevator causes an air pollution problem we feel that elevator should comply with the standards.

Mr. President, I ask unanimous consent to have printed in the RECORD documents indicating how it would impact in the State of Kansas.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAY 13, 1977.

The Emission Standard & Engineering Division, The U.S. Environmental Protection Agency, Research Triangle Park, N.C.

Attention: Mr. Don R. Goodwin.

DEAR MR. GOODWIN: On March 7, 1977 we wrote to you relative to various concerns which we had relative to the New Source Performance Standards which appeared in the Federal Register on January 13, 1977. Since that time we have attended the Regional Meeting in Kansas City, Missouri on March 11, 1977. We were in attendance at the EPA meeting in Des Moines on April 15, 1977. We had the opportunity to meet with Walt Barber at Wichita on the evening of April 21, 1977. Mr Barber was also on our convention program on Friday, April 22, 1977 to be available to our membership for questions and to present information relative to the proposed standards.

As you are aware, various individuals, State and National Associations, and various other organizations have made comments and voiced concerns relative to the proposed standards. It is our conviction that EPA has not received enough data through its own research and from other sources to have an accurate picture of what a typical elevator

operation in the State of Kansas involves in terms of licensed capacity, typical receiving leg capacities, rail and truck loading capabilities, typical grain dryer capacities, and annual throughput volumes. In order to compile some useful data of this type, we sent a survey to our membership the week of April 17, 1977. We received 395 answers in response to this survey which should provide a substantial data base.

For your information we are enclosing a three page summary of the key items of the survey. Page 3 of this summary is a recap of the storage capacity of the licensed country elevators, the licensed terminal operations, and the licensed flour mills and grain processing operators. The summary speaks for itself for the most part. Pages 1 and 2 of the enclosed information provides a summary of survey data relative to the country and terminal elevator operations.

We would like to call your attention to the following information developed by the survey:

COUNTRY ELEVATOR ITEMS

(1) In reviewing the "Location by Population" section of country elevators, note that 120 out of 389 responses were located in rural areas or in cities with a population of less than 100 persons. This is very significant as it represents 30.5% of the responses. I think it is also significant to point out that 263 of the 389 locations or 67.6% of the country elevators are located in towns and areas with 1,000 or less population, and less than 7% of the locations are in towns of more than 20,000.

(2) In reviewing the "Throughput Volumes of the Country Elevators" you will note that 321 responses out of 366 or 87.7% had a throughput of not more than 1,500,000 bushels on an annual basis. The throughput here is based upon the calendar year 1976.

(3) The "Total Receiving Leg Capacity Summary" makes it obvious that a significant number of the country elevator operations have total receiving leg capacities in excess of 10,000 BPH. In fact, 108 of the 374 country elevator facilities have capacities in excess of 10,000 BPH and this represents 28.8% of this group. Slightly less than 10% of the country elevator facilities have a receiving leg capacity of more than 17,500 BPH.

(4) Also the "Receiving Leg Capacity Information" points out that a predominate number of locations have more than one receiving leg and dump pit. A significant number have as many as three and thus most of the facilities (318 out of 362 or 87.8%) are in the one to three receiving leg category.

(5) As the "Rail Loading Information" is studied you will note that 371 responses out of 36 (96.1%) indicate that their rail loading stations are not enclosed.

(6) It is apparent that a substantial number of the operations have more than one truck loading facility, in fact 195 of the 381 (51.2%) have more than 1 loading location.

(7) In reviewing the "Types of Grain Dryers Utilized" it is noteworthy that 42% are column type and the next most common type is a batch dryer. Also as it relates to grain dryer capacities, it appears that over half of the grain dryers have rated capacity of less than 500 BPH. In fact 87.8% of the total dryers being utilized are 1,000 BPH or less capacity.

(8) The survey indicates that 47% of the country elevator respondents have no type of dust control equipment. Fifty-three percent indicate that they do have some type of capability. Further breakdown of the equipment being utilized indicates that 76% of the control devices being utilized are low efficiency cyclones and 17% are high efficiency cyclones and 93% of the total control equipment being utilized are cyclone separators.

(9) It is very interesting that a considerable number of facilities are giving consideration to some type of expansion within the next five years. The most popular need mentioned was additional storage capacity and the second most frequently mentioned need was to speed up receiving and handling capabilities.

TERMINAL INFORMATION

There are several significant conclusions that can be made relative to the terminal elevator information, some of which is as follows:

(1) Approximately 83% of the terminal respondents were located in towns of 20,000 population or less.

(2) Nine of the 15 terminals or 60% indicated that they had an annual throughput of 1.5 million bushels or less, and 26.5% had an annual throughput of more than 5,000,000 bushels.

(3) Eighty percent of the terminal respondents indicated that their total receiving leg capacity is 25,000 BPH or less.

(4) The survey indicates that over 50% of the rail loading operations are enclosed and approximately 63% of the truck loading stations are enclosed.

(5) The majority of the grain dryers utilized in the terminal operations (80%) were of the column type units. Eighty percent of the grain dryers were of a 1000 BPH or less capacity. The drying of grain is an operation usually completed on the farm or the country elevator.

(6) Eighty-six percent of the respondents indicated that they were using some type of dust control equipment. There was a fairly uniform distribution as far as type of equipment was concerned with 37.5% indicating they were utilizing the bag filter system, a like number indicated useage of low efficiency cyclone and 26.6% indicated utilization of high efficiency cyclone separation equipment.

(7) In regards to expansion considerations, if EPA costs are not considered it is evident that nearly 47% of the operations are considering doing more than one type of expansion with a slightly larger percentage indicating that they will be doing more speeding up and increasing their receiving capabilities than any other type improvement.

Hopefully the survey data will be considered as the New Source Performance Standards are re-written.

Following are some of the specific concerns that we have relative to the New Source Performance Standards:

(1) We feel that there are serious definitional problems including:

(a) What constitutes an elevator needs to be clarified. Many firms operate several facilities under one company or corporate name and these facilities are generally all licensed under one warehouse license. For purposes of defining an elevator under the proposed regulations, we feel an elevator should be recognized as being a separate facility when it is not physically connected to the other facilities by ordinary grain handling equipment.

(b) Storage capacity should be defined as the licensed capacity of the storage facilities.

(c) Receiving leg capacity should be 80%–85% of the manufacturers rated capacity because the rated capacities are 100% values and exceed the actual capacities.

(d) A "modification" should be defined more broadly for this industry than the general definition contained in the existing regulations.

(2) The establishment of zero opacity standards for truck unloading, grain handling facilities, box car loading, hopper car loading and establishment of 10% opacities for truck loading facilities and no visible emissions for rail unloading is too restrictive. We feel that there will be enforcement problems with the establishment of these restrictive opacity levels. It is our belief that if EPA does not really mean to establish zero opacity levels, then the standards should state specifically what is expected. We recommend that a minimum standard for truck unloading and rail unloading and the grain handling facilities as well as hopper car loading units should be no less than 15% opacity and that the truck loading and box car loading facilities should be 20% opacity.

(3) The requirement that all truck unloading pits shall be enclosed and that the use of quick closing doors will be located at the rear is not feasible particularly with respect to country elevator facilities. It is our firm opinion that during rush harvest situations the quick closing door mechanism will reduce the truck unloading efficiency approximately 15% to 25%. Additionally we feel that there are certain safety hazards involved with the number of openings and closings that would be required during the course of a harvest movement. Also the use of grain wagons behind tractors would restrict the use of the doors. This is a poor requirement and is not practical.

(4) It is our understanding that the proposed standards have endeavored to exempt elevator facilities that have receiving leg capacities of less than 10,000 BPH. We agree that there should be a lower limit cut-off established. Utilization of a total receiving leg capacity of 10,000 BPH based upon the enclosed survey, however, is going to have a serious economic impact on a substantial number of the country elevators. The survey would appear to indicate that a 20,000 BPH total receiving leg capacity would be more appropriate. Perhaps the lower limit cut-off also needs to consider total rated storage capacities in some manner and this capacity should be in the 1.5 million bushel range for country elevator facilities and 5 million bushel range for terminal elevator facilities.

(5) Since the date the final regulations are going to be completed is still unknown, it would seem appropriate that EPA should withdraw the standards as proposed in the Federal Register on January 13, 1977 and they should be reevaluated and rewritten for subsequent republication and comment. It seems inappropriate for the present proposed standards to be in effect in light of the amount of time since the standards were first published and on this basis the effective date of the NSPS should be changed.

(6) Finally we continue to be concerned that NSPS is going to be significant in terms of the cost for new equipment as well as additional annual operating expenses and that the change in our ambient air quality is not going to be measurable.

The conclusion that the grain industry is a major contributor to air pollution is inaccurate and needs to be re-evaluated and considered. It is our belief that the State of Kansas has adopted plans that are adequate and proper to regulate the grain industry. Their plans for existing sources as well as new sources seem to be very satisfactory as far as the industry and general public are concerned. The plans are being carried out and enforced. We do not have problems with elevator pollution that the State of Kansas has not been able to solve.

Sincerely,

W. A. SAUDER,

Chairman, Kansas Grain and Feed Dealer Association, Environmental Committee.

KANSAS GRAIN AND FEED DEALERS ASSOCIATION RECAP OF ELEVATOR SURVEY EPA DATA

	Country elevator		Terminal elevator	
	Number of units	Percent	Number of units	Percent
Location by population:				
Rural	67	17	1	6½
Less than 100	53	14		
101 to 500	97	25		
501 to 1000	46	12	1	6½
1001 to 2500	69	17		
2501 to 5000	32	8	1	6½
5001 to 10,000	10	3	1	6½
10,000 to 20,000	13	3	6	40
20,0001 to 50,000	2	1	3	20
50,001 to 100,000	0			
Excess of 100,000	0		2	14
Total	389		15	
Annual volume-thruput (bushels per year):				
Less than 100,000	14	4		
101,000–250,000	35	10	1	6½
251,000–500,000	101	27	2	14
501,000–1,000,000	119	31	3	20
1,001,000–1,500,000	52	14	3	20
1,501,000–2,000,000	25	7	1	6½
2,001,000–3,000,000	13	4		
3,001,000–5,000,000	6	2	1	6½
Over 5,000,000	1	1	4	26½
Total	366		15	
Total receiving leg capacities (bushels per hour):				
Less than 1,000	3	1		
1,001–2,000	21	6		
2,001–3,000	27	7	1	6
3,001–5,000	65	17		
5,001–7,500	79	21	3	20
7,501–10,000	71	19	2	14
10,001–12,500	34	9		
12,501–15,000	30	8	2	14
15,001–17,500	10	3	1	6
17,501–20,000	10	3		
20,001–25,000	12	3	3	20
25,001–30,000	5	1		
30,001–40,000	3	1	2	14
40,001–50,000	2	½		
Over 50,000	2	½	1	6
Total	374		15	
Receiving leg info—per location:				
1 leg	105	29	4	26½
2 legs	160	44	5	33½
3 legs	53	15	5	33½
4 legs	31	9	1	6½
5 legs	4	1		
6 legs	4	1		
6+ legs	5	1		
Total	362		15	
Rail loading facilities—per location:				
None	7	2	1	6½
1 location	230	60	8	53½
2 locations	107	28	3	20
3 locations	24	6	3	20
4 locations	10	2½		
5 locations	5	1		
5 plus locations	3	½		
Total	386		15	
Enclosed facility	15	4	8	53
Open facility	371	96	7	47
Truck loadout facilities—per location:				
None	23	6	4	26½
1 location	163	43	8	53½
2 locations	119	31	2	13½
3 locations	30	8	1	6½
4 locations	17	4		
5 locations	4	1		
6 plus locations	25	7		
Total	381		15	
Enclosed facility	213	56	10	67
Open facility	168	44	5	33
Grain dryer types:				
Batch	74	29		
Rack	23	9	1	6
Column	158	62	4	27
Other				
Total	255		5	
Dryer capacities (bushels per hour):				
500 or less	134	52½	2	40
501–1,000	90	35	2	40
1,001–1,500	21	8	1	20
1,501–2,000	2	1		
2,001–2,500	3	1		
2,501–3,000	2	1		
3,001–5,000	2	1		
Over 5,000	1	½		
Total	255		5	
Dust control equipment:				
No dust control	168	47	2	13½
Has dust control	192	53	13	86½
Total	360		15	
Type of dust control:				
Bag filter system	25	13	6	37½
Hi efficiency cyclone	32	17	4	25
Lo efficiency cyclone	146	76	7	37½
Total	192		15	
Expansion consideration: [1]				
Type A	147	39	6	40
Type B	88	23	5	33
Type C	207	54	4	27
Type D	93	25	4	27
None of the above	45	12	8	53
Total	380		37	

[1] The above elevators would consider the following types of expansion within the next 5 yr if EPA costs were not involved: (A) Add receiving leg and pit or speed up existing; (B) Speed or up add additional loadout facilities; (C) Build additional storage capacity; (D) Add additional grain drying capacity.

KANSAS ELEVATORS, MILLS, AND TERMINALS

	100,000 bu. or less	101,000–250,000	251,000–500,000	501,000–750,000	751,000–1,000,000	1,001,000–1,250,000	1,251,000–1,500,000	1,501,000–1,750,000	1,751,000–2,000,000	2,001,000–2,500,000	2,501,000–3,000,000	Excess of 3,000,000	Total
Country elevators:													
Kansas license	153	205	206	100	39	30	9	6	3	5	3		759
Federal license	4	12	26	30	27	19	13	7	4	3	5	4	154
Total country elevator	157	217	232	130	66	49	22	13	7	8			
Percentage	17	24	25	14	7	5	3	14	1	1	1		

	Less than 500,000	501,000–1,000,000	1,001,000–2,000,000	2,001,000–5,000,000	5,001,000–7,500,000	7,501,000–10,000,000	10,001,000–15,000,000	15,001,000–20,000,000	20,001,000–25,000,000	25,001,000–30,000,000	30,001,000–35,000,000	Excess of 35,000,000	Total
Terminal operations:													
Kansas license		2	6	5	2		4		2	1			22
Federal license			1	3		1	2		2				9
Total terminal		2	7	8	2	1	6		4	1			31
Percentage		6	23	26	6	3	20		13	3			
Flour mills and grain processors:													
Kansas license	5	2	4	4		1							16
Federal license			2	7	1								10
Total mills	5	2	6	11	1	1							26
Percentage	19	8	23	42	4	4							
Total licensed elevators													970

Mr. CLARK. Mr. President, last January EPA proposed a regulation to limit the emission of grain dust from certain grain elevators. Although EPA officials expressed their intent that that regulation apply to new facilities, and that its coverage be limited to very large facilities, in fact the proposed regulation would probably have required expensive dust collection equipment to be installed on many small elevators in country locations.

Because dust emissions from these facilities do not generally constitute a problem in the communities where they are located, and because the collection of these emissions requires a large investment relative to the importance of the dust emissions and relative to the abilities of many of these firms to afford the investment, EPA received a very large number of comments on the initial proposed regulation.

Soon after this proposed rule was issued last January, members of my staff met with EPA officials who reassured us of their intent to clarify the proposed rule and to discuss their proposals with members of the grain trade before issuing a final rule. The period for comment was extended to permit the trade to comment more fully.

EPA officials did meet with interested members of the grain trade in Kansas City in March. And, on April 11, at my invitation, key EPA officials attended a meeting of Iowa elevator operators in Des Moines, Iowa. I chaired that meeting. Several hundred elevator operators spent a full day commenting on the proposed rules and discussing ways the rules could and should be changed.

At that meeting, EPA once again assured us that the proposed rule would be rewritten, and that the final rule would exclude country elevators.

On Monday of this week, Mr. President, I asked Mr. Costle to confirm the assurances given us in Des Moines that EPA would in fact rewrite the proposed rules to exclude country elevators. Tuesday, he replied to me that he has directed that the final rule be designed to exclude country elevators from coverage. I ask unanimous consent that his complete response be included in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D.C.,
June 7, 1977.

Hon. DICK CLARK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CLARK: This is in response to your letter of June 6, 1977, in which you inquired about EPA's plans to regulate grain handling facilities.

Earlier this year, EPA proposed a regulation to limit the emission of air pollutants from new grain handling facilities pursuant to Section III of the Clean Air Act. We have received a large number of comments on the regulation many of which indicate that the proposed regulation will impose an unreasonable burden on the owners and operators of country elevators.

I have reviewed the proposed regulations and the public comments and have concluded that, in general, country elevators are not appropriate for inclusion under the new source performance standard. Country elevators tend to be small, economically marginal facilities which do not constitute an air pollution problem which requires federal regulation. Accordingly, I have directed that the regulation be redrafted to provide an exclusion for country elevators.

Upon completion of our analyses, I will decide whether this exclusion should be applied to all country elevators or whether there is a small number of the very largest country elevators which should continue to be covered. While I have not determined the exact size of country elevators to be excluded, I can assure you that only the very largest, if any, will be subjected to Federal regulations.

The exact wording of the revised regulation has not been developed. Many comments have suggested that neither storage capacity nor receiving leg capacity is appropriate for use as a basis for excluding country elevators. A storage capacity limit alone would tend to exclude high throughout terminal facilities, while including some country elevators which would be less able to finance necessary control equipment. At this time, it appears that some combination of storage capacity and receiving capacity cutoffs, may be the most appropriate. Another alternative being considered is the exclusion of facilities which do not have the capability to receive rail shipments. This would eliminate virtually all country elevators from consideration, but could also exclude some processing facilities.

A revised draft regulation will be prepared and circulated to interested members of the public and the Congress for comment on the revised coverage and stringency of the standards. After reviewing those comments and consulting with Congress and the affected parties on any remaining areas of concern, I will promulgate a final regulation.

In the light of my decision to exclude most, if not all, country elevators and our plans for further consultation with the public and the Congress, I believe that the proposed amendment to the Clean Air Act is unnecessary.

Sincerely yours,

DOUGLAS M. COSTLE.

In the same letter, I asked Mr. Costle if he would detail for me the approach he was proposing to accomplish that exclusion. I regret to say that the exact wording EPA intends to propose to exclude country elevators has not yet been completed. The Administrator points out that no simple description is entirely adequate. Storage capacity alone is not an adequate criterion because a high figure, such as the 2½-million-bushel minimum adopted by the House, does not adequately include certain high throughput facilities, but may at the same time, unnecessarily cover some of the larger country elevators.

The Administrator is considering a complex definition that would be based on a combination of storage capacity and receiving capacity. In addition, the presence or absence of facilities to receive rail shipments may be considered since the absence of such facilities often distinguishes country elevators from other facilities.

Mr. President, I regret that we still do not have specific language from Mr. Costle that would permit us to evaluate for ourselves just how he proposes to make good on his assurance that country elevators will be excluded from coverage under Federal grain dust regulations. However, to be fair, we must recognize that the task of writing a regulation that covers those sources of dust emissions that are serious problems but does not unnecessarily burden firms whose emissions are not a serious problem is a difficult and complex one. Grain elevators are complex and vary greatly in type of operation, type of location, size, and amount of grain handled.

Some facilities, for example, serve mainly as loading facilities and handle many times their storage capacity each year. Others are mainly storage facilities. Some add little dust to an already dusty environment. Others may be a major source of air pollution. I support EPA in its concern that all these factors and many more be fully considered in defining which elevators should be covered and which should be excluded.

However, it is important that the intent of Congress be very clear on this matter. And, I believe the amendment offered by the Senator from Kansas as modified by the agreement with the committee chairman, makes it very clear that small elevators are to be excluded from coverage by this law. Although the definition of a "country elevator" is not specifically included, Congress will be able to exercise its oversight responsibility to insure that the definition is appropriate and specific.

Thus, I support the adoption of this amendment.

Mr. DOLE. Mr. President, I am prepared to yield back the remainder of my time.

Mr. HART. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Kansas.

The amendment was agreed to.

Mr. HART. Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time be charged against both sides on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 379

Mr. METZENBAUM. Mr. President, I ask that amendment No. 379 be called up at this time.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM), for himself, Mr. RANDOLPH, Mr. BAYH, and Mr. HEINZ, proposes an amendment numbered 379.

The amendment is as follows:

On page 67, between lines 18 and 19, insert the following:

"SEC. 18. Title I of the Clean Air Act is amended by adding after section 120 (as

added by section 11 of this Act) the following new sections

"'ASSURANCE OF ADEQUACY OF STATE PLANS

"'SEC. 121. (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.

"'(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

"'SEC. 122. (a) After notice and opportunity for a public hearing—

"'(1) the Governor of any State,

"'(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 of coal or coal derivatives other than locally or regionally available coal or coal derivatives by any source referred to in subsection (d) to comply with the requirements of a State implementation plan.

"'(b) Upon a determination under subsection (a) the President (or his designee) by rule or order may prohibit any 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.

"'(c) The President (or his designee) under subsection (b) 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 locally or regionally available coal or coal derivatives.

"'(2) enter into contracts to acquire any additional means of emission limitation which the President or his designee determines may be necessary to comply with the requirements of this Act while using such 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 major fuel burning stationary sources which are not in compliance with the requirements of an applicable implementation plan or which have been 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 President or his designee 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 this Act.

"'(f) For purposes of any plan (or portion thereof) promulgated under this title, any rule or order under this section shall be treated as a part of such plan.

"'(g) For the purpose of this section—

"'(1) The term "locally or regionally available coal or coal derivatives" means coal or coal derivatives which is, or can be mined or produced in the local or regional area (as determined by the President or designee) in which the major fuel burning stationary source is located.

"'(2) The term "major fuel burning stationary source" means any fossil fired stationary source with design capacity to produce 250,000,000 B.t.u./hr. (or its equivalent as determined by rule of the Administrator).'".

Redesignate the following sections of the bill accordingly.

The PRESIDING OFFICER. There are 2 hours on this amendment, equally divided.

Mr. METZENBAUM. Mr. President, the amendment which we are offering today seeks to preserve the jobs of thousands of miners. Without it there will be a severe negative impact on the economic base of the Midwestern and Appalachian coal-producing States. But before I proceed further I want to stress that this amendment will not—I stress "will not"—weaken our Nation's air quality standards.

Mr. ROBERT C. BYRD. Mr. President, may we have order while the Senator is addressing the Senate?

The PRESIDING OFFICER. The Senator will suspend.

The Chair requests all Senators that conversations in the Chamber be dispensed with.

Mr. METZENBAUM. Our amendment—when I say "our amendment," it is jointly sponsored with Senator RANDOLPH, Senator BAYH, and Senator HEINZ—is necessary because the utilities are threatening to use these air quality standards as an excuse for breaking contracts with local and regional coal mining operations. Our amendment only seeks to prevent noncomplying utilities from needlessly disrupting the social and economic fabric of those mining communities which have historically supplied coal to these powerplants. It accomplishes this end by authorizing the President or his designee to mandate the use of local or regionally available coal supplies in those instances where the State, EPA or the President determines that such action is necessary in order to prevent a significant adverse economic impact.

I point out that although the EPA may provide the triggering mechanism, the only one who can make the determination as to the significant economic impact being a factor, and therefore requiring the use of regional coal, is the President or the Administrator.

Mr. President, unless this amendment is adopted, my own State of Ohio will continue to be held hostage by the utilities. Nineteen utilities consuming 30 million tons of Ohio's coal are expected to be out of compliance with recently promulgated sulfur dioxide standards. The utilities have indicated they intend to comply with these standards by drastically reducing their consumption of Ohio coal, making up their needs by importing low sulfur western coal. Fifteen thousand miners and the entire southeastern portion of my State will needlessly suffer if the utilities go through with their plans. We, in Ohio, have over 40 billion tons of coal at our disposal. In my opinion, it would be nothing short of criminal if we were to permit such senseless action. My State is already suffering from a lack of social responsibility exhibited by some utilities.

I would like to share one of these incidents with my colleagues. One of the largest powerplants in my State, a plant which consumes 6 million tons of coal a year, is able to burn high sulfur coal in full compliance with EPA clean air standards. But does American Electric Power, the largest investor-owned utility in the Nation, do so? No, they do not. They import 3 million tons of coal per year from the West. Why, you might logically ask. The answer is simple. American Electric Power owns the mines out West; it is able to pass through $23 a ton in transportation charges directly to the consumer without a hearing before the Public Utilities Commission; and it owns a barge-loading facility that AEP wants to keep busy at the consumer's expense. AEP need not concern itself about higher prices because its Ohio customers pay the extra charges without any right of appeal. Ohio's Public Utilities Commission, like those in so many other States, permits utilities to pass on all of the extra charges by reason of the fuel adjustment clause. The bottom line: consumers pay $40 a ton for western coal instead of $22 for Ohio coal and thousands of Ohio miners wind up on the welfare rolls. Recently in an appearance before the energy committee, I asked the spokesman who was appearing on behalf of American Electric Power Co., the company that has been importing western coal to the detriment of Ohio consumers, the following question:

Why are you importing coal at twice the price from your own mines when you could use Ohio coal at half the price.

The response:

The mine has been developed and the coal is coming out of the mine.

In other words, Members of the Senate, he was saying "We have got the coal and

we are going to use it and the Ohio consumers are going to pay for it."

I think that this is the height of crass indifference to consumer and employment concerns—and the worst part of it is that AEP attempted to justify their actions by blaming it on the EPA.

Mr. DOMENICI. Mr. President, will the Senator yield for a question?

Mr. METZENBAUM. Not at this time. I would be very happy to yield for a question at the conclusion of my remarks.

But the implications of these actions go far beyond the borders of Ohio, or Indiana, or Pennsylvania, Illinois, Kentucky, Tennessee, or Alabama, where thousands upon thousands of jobs are threatened. There are national implications which should not be overlooked. While there are many uncertainties surrounding this Nation's energy policy, there is one area in which there is little disagreement, and that is the necessity for dramatically increasing the Nation's coal production. Our country is fortunate in that we have abundant coal resources, and equally fortunate to have these resources spread throughout the Nation. Why should Ohio, with 40 billion tons of coal beneath its surface, be forced by its utilities to buy coal from a source 1,900 miles away? Why should we be forced to build elaborate and costly transportation systems, probably with Federal funds, to connect western coalfields to the East, when existing rail transportation system in the East are begging for the business? I, for one, do not believe these questions have satisfactory answers. As a National Journal Reports article pointed out:

> There are an additional 82 billion tons of low sulfur reserves in the East, of which half is recoverable through current deep mining techniques. At current production rates for the Eastern States, these reserves could supply that region's coal needs until well into the 21st century. Beyond that, there are vast reserves in the East and Midwest of medium and high sulfur coal that could be burned. . . .

This amendment does not propose that we contaminate the air 1 degree higher than the limits imposed by the EPA. In fact, our approach has the support of EPA Administrator Douglas Costle, who recently stated that:

> The loss of mining jobs in high sulfur regions should be viewed as unacceptable by the Congress. I believe measures should be adopted to encourage the greatest use of locally available energy resources.

This is the kind of measure to which Mr. Costle was referring.

Mr. President, this amendment is needed. This amendment is an absolute. This amendment will help keep the depressed economies of the Appalachian region from being further depressed. It will save the jobs of thousands of miners and railroad workers in the east. My cosponsors, Senators RANDOLPH, BAYH, HEINZ, and I present it to you with the full support of a broad-based group of those concerned with the environment and those concerned with keeping American workers on the job. This amendment has the full support of the National Clean Air Coalition, the Environmental Policy Center, the Sierra Club, the United Mine Workers, the AFL-CIO, the United Steelworkers of America, the United Transportation Union, and Conrail. Mr. President, and Members of the Senate, we hope it will have your support as well.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Mr. President, will the Senator from Maine yield me 15 minutes?

Mr. MUSKIE. Yes, I yield 15 minutes to the Senator from New Mexico.

Mr. DOMENICI. I will open by answering the question I was going to ask the sponsor of the amendment, but midway through his presentation he talked about one of his utility companies, and I am not interfering with his State, he probably knows more about it than I do, but he cited the answer that a utility company in his State made in terms of why they were going to use low-sulfur western coal in their particular plant.

I was going to ask the sponsor of this amendment if he had asked the President of that company why they developed the western coal and what their answer was because that is rather relevant.

The sponsor would make it sound like this particular utility company did this because they did not want to buy coal from their own State. The answer to the question why is that an erroneous sulfur regulation was put on in that State. They could not comply with it any way other than to buy low-sulfur coal. They could not buy low-sulfur coal unless they went out and developed it themselves. And then some 3½ years after they did this in the courts of their State, they threw out that sulfur limitation as being unreasonably low, and his utility company is sitting there with a court order saying, "What the State told you to do 3 years ago you don't have to do any more." And they have gone on and found some coal so they could continue generating electricity. That is that set of facts.

Let me say, Mr. President, the Members of the Senate, regardless of the shopping list of supporters that the Senator from Ohio has just elaborated, we better consider this amendment carefully. We better consider this amendment carefully. This is economic Balkanization. This is going to put back into place in the United States some regional economics that do not make sense for our country but have some rather parochial type of benefits, maybe.

Let me say to everyone here we have heard the President of the United States and anyone else who knows anything about energy say that the United States of America is going to go from about 640 million tons of coal to somewhere around 1 billion to 1.2 billion by the year 1985. That is the mandate of our President's goal, and no one disputes that it is going to be in that range.

I say to Senators, how can we come here today as Senators and believe without any facts that unless we order by Governors the regional use of coal by utility companies that we are going to put miners out of work? It just does not make sense. We are going to double the coal production of this country. If there is a little bit of a lag in certain parts of this Nation because of scrubber technology lag and because of low sulfur coal being some kind of temporary stopgap, we can rest assured that the miners of the United States are not going to be out of business. The United Mine Workers do not have to worry about whether they are going to have jobs. They better start worrying about whether they can train the thousands of new miners who have to join their ranks and hopefully their unions to produce the coal that America needs.

This is absolute insanity to come along at a point in time when we all know we are going to double the production of coal and say that. And now I will tell Senators what this amendment says. It says in any State or region—and I do not know what "region" means, but it certainly does not mean the United States of America—any utility company presumably that burns coal—I am not sure it says that either—but presumably that burns coal and is out of compliance. There can be a finding made that they are not selling as much local coal in that area as they should. And that is an economic finding by someone, a Governor or EPA. If you make that finding, then this amendment says that you can order that utility company to enter into 10-year contract to buy local coal and, if that coal is too dirty, to enter into contracts to mandate them to put on technology to clean up that local coal to meet the Clean Air Act of this Nation.

If that is not economic Balkanization I have not seen one.

Having said that, I want to make it clear my State is a low-sulfur coal producing State. So the good Senator from Ohio will not think that I am a Johnnie-come-lately on this statement that I will make next, 2 years ago I made a speech saying that I do not want western coal shipped all the way across America to be burned in Ohio. We have enough use for it out there. We do not have enough water to develop it. So I am not looking for coal business for the Navajo Nation in New Mexico or for New Mexico. Let me make sure that that is not my motive.

But let me conclude by saying that this does not belong on a clean air act bill. The Senate has a coal conversion bill submitted by the President. It has a coal conversion bill submitted by Senator JACKSON. If we are even interested in forcing regional purchasing of coal based upon there not being enough jobs for coal miners, then we should most certainly take it into consideration in the coal conversion energy plans for this Nation and not come down here on a clean air act and say somehow or another our efforts to comply with the Clean Air Act, which sets the standards, health and otherwise, for pollutants are penalizing local coal development; consequently, we are going to come in on a national policy of clean air and establish a new economic policy for eastern coal miners and eastern coal development. It simply does not make sense.

I submit that at best it should be considered as part of our national energy policy, but certainly it should not be adopted as part of a national policy on clean air.

Mr. President, there are all kinds of economic activities in a nation like ours with a $3 trillion economy. If we start this, then we can follow it logically along and say, "Well, maybe the next depressed employment market in a State ought to come over here and ask Congress and if that Governor finds that economic market to be depressed, then he can order that you cannot bring in merchandise from another State into that State so you will employ more of the people from the State that has the somewhat depressed market."

That is what I mean by Balkanization. That is going to happen just as certain as we are sitting here if we let one group, one part of the American economy, regionalized and somewhat selfish in this instance, come along and say: Mandate the use of our product, mandate it under the guise of a clean air act, and mandate it under the guise submitted by the Senator from Ohio. We want to keep these people in jobs, and we want to make sure they get the salaries and are employed every day of the week.

Can we imagine at the time the United States of America was formed with the union of States when they talked about free flow of commerce between the States that they had this kind of thing in mind? And here we are in 1977, under the guise of helping people but playing absolute games with the American economic system.

For those who are worried about whether or not there is going to be enough jobs for coal miners I repeat myself: There is no one suggesting to the energy committees of the Senate that there is going to be unemployment among coal miners in America. To the contrary, all the experts are telling us you better start training programs so we will have more young men and women available to work the coal mines because we are going to need thousands more.

What this amendment is, as this Senator sees it, is an attempt to fasten an amendment on a clean air act that regardless of the economics and regardless of the national consequences will assure that certain mines in Eastern America will sell their coal to their utility companies regardless of the economic consequences even on their consumers.

I submit to the Senator from Ohio that there is not even anything in his amendment that assures that they will not force us to do this even if the cost is higher to your consumers. There is nothing in this bill that says if there is an economic depressed area that they still have to be sure that the consumers will get the best deal. They could force you to buy that coal even if it is "higher than," and there is nothing in the amendment that says they cannot do that. At the minimum that should be in there.

What about the availability of scrubbers? How can you force a company to buy high sulfur coal and then force them to order the technology to be put on it?

What if it is not available? The whole purpose of this Clean Air Act is to force the technology, force the cleanup, within the framework of this economy, making rational decisions; and sometimes it is hard to make them because of the time constraints.

This proposal would undercut that absolutely. It would eliminate competition most assuredly, and ultimately it serves no purpose, because the consumer may get nothing out of it.

We are talking about helping miners who are not going to be unemployed anyway. Maybe for the next 5, 6, or 7 months; and by that time we will already have made decisions like this one, then the boom will come in mining, as certain as day follows night. Then what we will do about it? We will already have them locked into 10-year contracts, and we will already have them locked into technology they were not ready for, all in the guise of helping maintain a viable economy for coal miners and coal development in certain high sulfur coal deep-mining States.

I just do not think that is the way to do it.

Mr. WALLOP. Mr. President, will the Senator yield at that point?

Mr. DOMENICI. I am delighted to yield to the Senator from Wyoming.

Mr. WALLOP. Mr. President, I just cannot believe some of the things I hear. It is not the business of Congress to involve itself in a jurisdictional dispute with a public service commission in a single State of this country. But that is one of the things that was given as a reason why we should vote for this amendment.

The amendment does not belong in an environmental bill. It polarizes the decisionmaking process. We are, in fact, trying to do something about the air in this country, not the economics in this country, and certainly not in this bill. The economics belong elsewhere.

The Clean Air Act, applied to the President's energy proposals, already politicizes the air and the water of the United States, from the West to the East. The energy program does the same thing. They are saying if it is economically unfeasible to use coal, then you can burn oil and gas; from where? From the South. If it is technologically unfeasible to do that, you can burn clean coal. From where? The West.

I agree with the Senator from New Mexico. I do not want my State raped by all the hungry Eastern industries. I would just as soon not have a big coal boom out there, and have everything that is going to be taken into account in this kind of conversion to coal from natural gas.

But that does not belong in this bill. We are talking about air, not economics. We are talking about the clean air coalition and the Sierra Club and all those people who support it support it, for one reason, and one reason alone: They do not want any mining in the West.

They are not satisfied with the strip-mining bill we passed. As a matter of fact, I am not satisfied with it either. But we are not dealing with that in this bill. We are dealing with air, not economics. It does not belong in this bill, and it would only serve to Balkanize the regions of this country. I agree with the Senator.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. WALLOP. May I ask the distinguished floor manager for another 2 minutes?

Mr. MUSKIE. Yes. How much time does the Senator want?

Mr. WALLOP. Two minutes.

Mr. MUSKIE. I yield the Senator from Wyoming 2 minutes.

The PRESIDING OFFICER. The Senator from Wyoming may proceed for an additional 2 minutes.

Mr. WALLOP. The problem that this proposal brings up is that it is a precedent-setting venture for Congress to launch itself on, anyway. I agree with the Senator from New Mexico; we cannot get into the business of mandating the use of products anywhere in this country. It is a dangerous precedent.

I sympathize with the Appalachian problem and the Ohio problem, but this is not the way to attack it. It is an irresponsible approach to an environmental bill. It polarizes the whole thing; it regionalizes this country; and we are trying to do something about the environment, not our economy, in this bill.

I yield back the remainder of my time.

Mr. BAKER. Mr. President, will the floor manager yield me 2 minutes?

Mr. MUSKIE. I yield 2 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I am most sympathetic to the purposes sought to be served by this amendment, suggesting that competition of low-sulfur coal from other regions of the Nation because of clean air requirements may cause the diminution of demand at existing powerplants for the high-sulfur coal found in Ohio, Tennessee, Kentucky, and elsewhere.

Mr. METZENBAUM. Mr. President, I cannot hear the Senator.

Mr. BAKER. Is the public address system not working? Can the Senator hear now?

Mr. METZENBAUM. Now I can.

Mr. BAKER. OK, fine.

While I am sympathetic to that objective, and while I understand the purpose sought to be served, it also generates two or three other problems that are of extreme concern to me, and I hope to other Members of the Senate.

One of them was just discussed most eloquently and effectively by the distinguished Senator from New Mexico and the distinguished Senator from Wyoming.

I do think, in fact, that the question of commonality of States as a federation of sovereign entities was decided a long time ago. This is a form of trade barrier between States, and should not be undertaken.

I would like to see some way to assure the maximum utilization of coal in my region of the country; but I would not like to see it at the expense of the Balkanization, as my colleagues have put it, of commerce in the United States.

There is another reason that occurs to me that is of grave concern. As I understand the amendment offered by the distinguished Senator from Ohio, the effect would be to permit EPA, for the first time, to order the installation of scrubbers.

Mr. METZENBAUM. Mr. President, will the Senator yield for a question?

Mr. BAKER. On the Senator's time.

Mr. METZENBAUM. On my time. In the original amendment that was offered, and in the amendment that has passed the House, that would be correct. Under the amendment that is before us today, the only one who could make such an order is the President or his designee not the EPA.

Mr. BAKER. Well, someone could order scrubbers, Mr. President. Whether it is the President, the Governor, EPA, or someone else, the fact that someone could order scrubbers is desperately important to me, because I do not think scrubbers are a good idea. I happen to think we are between control strategies right now, and it may be that sooner or later—sooner, I hope—we will see the development of new technologies, such as fluidized bed burning, cold sulfur refining, or something I do not know about, that will permit us to remove elemental sulfur from the fuel bed and burn it without unfavorable assaults on the environment. But I am not convinced that wet limestone scrubbers or other variations of them are the answer. I am not convinced that we do not create more problems than we solve, as well as extraordinary costs, in many cases, greater than the cost of the plant originally.

This amendment, for the first time, would permit the direct ordering of scrubbers by some authority at some point. EPA has never had the authority to order scrubbers. We have carefully guarded against that in the Environment and Public Works Committee over the years. We require a result, not a technique.

Mr. President, I am not at all convinced that this proposal is going to help the cause of air quality. I am nearly convinced it will not. I believe it will cause economic and social problems by creating effective trade barriers between the States, and even though I am sympathetic to the objectives and will support any measure that will promote the use of eastern coal to be consumed in eastern plants, I do not think this is the answer; and I shall vote against it.

Mr. DOMENICI. Mr. President, will the Senator yield me some time?

Mr. MUSKIE. I yield the Senator from New Mexico 3 minutes.

Mr. DOMENICI. I would ask the senior Senator from Tennessee a question. He has most eloquently expressed his concern about forcing the ordering of scrubbers. Does it bother the Senator that the President would order a utility company to enter into a contract to acquire coal from that local source for 10 years or longer? The clear implication is that the minimum mandated contracts for the purchase of coal ordered is 10 years. Does that bother the Senator in the context of the American economic system?

Mr. BAKER. Mr. President, it does bother me, not only in the context of the American economic system, but because I would bet almost anything that within the scope of 10 years we will devise burning techniques that are far more effective than scrubbers were ever thought to be. So even if we were to adopt the Metzenbaum strategy and permit compelling the purchase of local coal for local consumption, I would certainly be upset with the idea that we had to do it with long-term or medium term contracts.

Mr. DOMENICI. The Senator heard my general discussion of the predictions of the future coal needs in our country, either under the President's plans, using his conservation figures, or any others. Does the Senator agree with me that basically by the year 1985 we will have almost doubled the use of coal in the United States?

Mr. BAKER. Mr. President, I think we will, because we must. But we have to make certain that we supply the capital, the equipment, the manpower, the training, and the transportation for that increase in coal production. Then we have to provide socially and economically sound methods for burning that coal. We do not really have either one right now, but I believe we will have them in due course. I would hate to see us lock in a strategy, as this would lock in a strategy, for that length of time.

Mr. DOMENICI. I thank the Senator from Tennessee. I would just say that I believe the Senator from Tennessee in his way has most succinctly placed the issue before the Senate: Do we want to use the clean air bill to make this kind of decision with reference to commerce between the States without any evidence whatsoever, and leave to someone else the task of finding some economic justification, with that economic justification being limited only to a finding with reference to the employment and development of coal mines and the employment of miners within a particular region of this country?

I conclude that the answer is unequivocally, "No." I hope everyone understands the seriousness of this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield 2 minutes to the Senator from Pennsylvania.

Mr. HEINZ. I would like 4 minutes.

Mr. METZENBAUM. I yield 4 minutes.

The PRESIDING OFFICER. The Senator may proceed for 4 minutes.

Mr. HEINZ. Mr. President, I have listened very carefully to the arguments of my distinguished colleagues (Mr. BAKER and Mr. DOMENICI), but I reluctantly have to say I disagree with them. I rise in support of the amendment. One of the principal arguments cited by the opponents of this amendment is that the Clean Air Act should be neutral on questions of regional economic development and land use.

Yet I have been here in the Chamber for the last 3 days and I have heard land use and questions of economic development discussed and argued about over and over again.

The fact is that when we talk about a specific standard, as we have in the law in California, we are talking about a regional problem. We are talking about the economics of various areas in the West.

When we say, as one of my distinguished colleagues did, that we are talking about air, not economics, in the Clean Air Act, I do not know where we have all been during debate on the various amendments, including the Riegle-Griffin amendment, which clearly was a question of the economics of a particular industry.

I just cannot agree that anyone in this body should be so naive as to assert that economics are not important in the consideration of amendments to the 1970 Clean Air Act. In fact, we are all concerned about economics.

The purpose of this amendment is to insure that we do not lay the groundwork for what could possibly turn out to be—because we cannot adequately perceive the future and we do not know—a cataclysmic economic disruption.

There are those who have said that somehow this amendment Balkanizes the United States. I believe that is based on a misreading of this amendment. The amendment does mention the Governor of a State, it mentions the administrator of EPA, and it mentions the President. But it does not give the Governors or the administrator any powers to implement any of the restrictions or orders permitted under this bill. Only the President or his designee may make such an order. It is the role of the Governors or the administrator to bring a problem to his attention.

When we are asking the President to take action and make a decision, I do not think any of us would ever expect a President, who has the constitutional authority to represent all the people, to take an action that would Balkanize the United States. I simply cannot accept that argument.

This by no means, Mr. President, is an extraordinary power of the Congress to vest in the executive branch. In various bills we have lodged far greater powers in the executive branch.

In the Coal Conversion Act we gave FEA tremendous powers to convert utilities to coal from oil and natural gas. The additional powers could only be employed when there are extreme and unusual circumstances, when there are significant economic disruptions.

I ask my colleague to yield 1 additional minute.

Mr. METZENBAUM. I yield 1 additional minute.

Mr. HEINZ. We are talking about very severe economic consequences, economic disruption, and high unemployment.

In spite of the good intentions and excellent arguments of my colleagues who oppose this amendment, I do not think we have anything here which is inconsistent with what we have done before. It is simply a question of prudence. As we develop the great resources of this country, as we protect our environment, we should be certain that one area of the country does not profit at the extreme expense of another. I certainly urge my colleagues to adopt the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BAYH. Mr. President, will the Senator yield?

Mr. METZENBAUM. I yield 4 minutes to the Senator from Indiana.

Mr. BAYH. Mr. President, I have listened to some of my colleagues, for whom I have the greatest respect, and I share their concerns. But I have to say that it is sort of like going after a mosquito with an elephant gun to suggest that the amendment of our colleague from Ohio is going to result in the Balkanization of our country.

Each one of us is elected from a State. It is quite normal that we put our own State's interests above any other State's interests. But when it comes down to the crunch, I believe all of us recognize that the national interest is greater than the interest of any one State.

However, I come to a different conclusion than some of my colleagues about the effect of the amendment of the Senator from Ohio.

As I see it, this amendment will help us do a better job of utilizing all of our resources over a long period of time. The President has called for an ambitious program of coal conversion to assist this Nation in moving toward energy self-sufficiency. I support this program. Therefore, I believe we have a responsibility, as we push forward in air quality legislation, energy legislation, even the rail legislation we are working on, to be certain that in the overall system we are building we assure the most efficient utilization of each ton of coal and each barrel of oil as we possibly can. It makes the best sense to me to turn to the resources closest to industries as we possibly can, if we look across the next 10, 20, or even 100 years.

I also believe the amendment is logically related to the purpose of this act. We are talking about air quality. I want us to have a program that is going to provide maximum incentives for each industry, for each segment of our industrial capacity in this county, to explore the horizons of possibility, to push us to utilize existing technology, and to develop and make commercial that technology which is now in the laboratories.

The Senator from Tennessee mentioned the fluidized bed combustion process. That is one of them. We are just a hair away from being able to implement that. It will not only take sulfur out, but we will get about 25 percent more Btu out of each ton of coal. I want to push utilities and all industrial sources to the ultimate. Let us make them search. Let us make them test themselves. If it is a question of doubt, instead of being able to buy themselves out of implementing air quality technology by going to the West and buying coal, let us have them make that tough choice of utilizing the technology which is available.

Let me say that the reason I am not as concerned as our distinguished colleagues about the Balkanization is that Governors cannot take the kind of actions we are talking about unilaterally. A Governor cannot initiate the process ultimately leading to a requirement to buy local coal, as I read the amendment, only to provide more jobs for Ohio or Indiana. He can only start this process if, according to the amendment, a change in purchasing patterns is going to create significant local or regional economic disruption or unemployment.

The amendment does not address new mines or new jobs. It applies only to existing mines that are going to be closed down, or currently employed miners who will be thrown out on the streets because a given industry makes a determination that instead of using technogy to deal with pollution, they are going to go West and buy coal.

I must say, as we increase our use of coal, I do not share the concern of my colleagues from the West that eastern States will try to abuse the process provided for in this amendment. I believe it will only be invoked in the case of hardship or serious dislocation.

Governors can make a finding of hardship, but the President has to make a final determination. When it gets down to it, I guess we have to ask ourselves whether we want the Governor of the State and the President of the United States to make this determination, or whether we want a given utility company to make the determination.

That is where it is. Who do we want to make the determination?

I must say, with all respect, I opt on the side of letting the Governor and the President make this determination.

The Senator from Tennessee mentioned scrubbers. I think we all have some concern about that. But I would like to point out that the amendment, as I understand it, does not necessarily require their use. My friend from Ohio can correct me if I am wrong.

May I have 1 more minute?

Mr. METZENBAUM. One more minute.

The PRESIDING OFFICER. The Senator has 1 more minute.

Mr. BAYH. Governors will make a determination, the President then will issue an order. If existing technology does not enable the utility or the manufacturing concern to meet the requirements in effect for an existing region, they cannot be required to use local coal even given a gubernatorial finding of hardship and a presidential order.

Mr. METZENBAUM. The Senator from Indiana is correct.

Mr. BAYH. This amendment does not say industry cannot go west. If technology does not exist to handle the problems of high sulfur coal, then an industry can go to a cleaner resource.

Mr. President, these are the reasons I am adding my support to the distinguished Senator from Ohio, because I think his amendment will insure that we make the best possible use of our resources and push us to explore new horizons of technology while at the same time it eases the possibility of serious economic distress in many localities.

Mr. GLENN. Will the Senator yield for a question?

Mr. METZENBAUM. Certainly.

Mr. GLENN. I have a couple of questions. I will start out by saying that I am very much for what my colleague from Ohio is trying to do with this amendment. I am very much for it.

A couple of questions came to mind in reading the testimony. I just want to make sure we have it clarified.

I believe he indicated there were some 19 utilities which could use nothing but low sulfur coal?

Mr. METZENBAUM. Nineteen utilitis that are not in compliance, will not be when the EPA standards become effective. That is correct.

Mr. GLENN. They would still not be able to use our high sulfur coal in Ohio, is that correct?

Mr. METZENBAUM. No. That is not. They could by using scrubbers or by washing the coal be able to use Ohio coal and it would be possible under this amendment in the event of severe economic dislocation or disruption for the President on the request of the EPA Administrator, the Governor, or the President's own initiative, to require them to use Ohio coal. But they would then have to bring down the contaminants by utilization either of scrubbers or by washing the coal.

Mr. GLENN. As I understand the amendment, first, it would not change the authority to waive the standards to use the high sulfur coal, is that correct?

Mr. METZENBAUM. That is absolutely correct.

In fact, about the first sentence I made in presenting the bill was that I stressed the fact that this amendment would not weaken our Nation's air quality standards.

I know the distinguished senior Senator from Ohio has seen fit to raise questions at time as to whether or not there should be waivers. But this amendment does not address itself to that question.

Mr. GLENN. I have been very concerned about the waivers because I thought it was a method by which they could make better use of our energy sources in this country, particularly high sulfur coal in Ohio, West Virginia, and Kentucky—Pittsburgh 8 seam, I believe is the number.

But I was also concerned as to these plants who, in good faith, as a result of our EPA laws, had a choice of either scrubbers or low sulfur coal, some plants opted one way, some another, some for both solutions, obviously.

Is there any estimate, for instance, on these 19 utilities who would have to put scrubbers on, what the scrubber cost would be for those utilities and what the impact would be on the electric bills of

the consumers from those plants if they had to put scrubbers on?

Mr. METZENBAUM. I appreciate the question. I think it is an excellent one.

Because I thought it was a matter of concern, I asked the EPA to prepare a report on that subject concerning a particular plant of the Ohio Edison Co. That report is available, published as of May 6, 1967, and I have it here.

That report indicates in unequivocal terms that low sulfur coal would actually, with operating costs, including depreciation, be higher in cost than to use Ohio's high sulfur coal and put on the needed scrubbers in our State, on the equipment.

The figures come out somewhere around $1 to $2 less on the ton.

In other words, the EPA has concluded that we can use high sulfur coal from Ohio, or Ohio coal with scrubbers, at a lower cost than using low sulfur coal that is imported from the West.

Mr. GLENN. That would be amortized out of what period of time, is that the life of the plant?

Mr. METZENBAUM. I do not know what amortization they used, but I assume they used the ones utilities would customarily use for their equipment.

Mr. GLENN. But the waiver authority is one which I wish we had in this. I am not prepared to try to amend the amendment, but I have thought for some time, particularly after last winter in Ohio—and the Senator is certainly aware of all the things that happened in Ohio last winter with regard to energy—that the President should have a waiver capability to get us through certain periods such as that.

I hate to see that not included in this very comprehensive effort at changing the law.

Does the Senator know whether there would be any electric utility generating plants which would actually be required to shut down in a situation like that, plants that could not possibly get scrubbers into place, that if the President, on the economic aspects of this, said we could use local Ohio coal, would any plants be required to shut down now because they could not meet emission standards?

That is of considerable concern because we might be solving one problem and getting into a far worse one in that area.

Mr. METZENBAUM. By giving the President the opportunity to take into account all the factors, which we do in this bill, then I am certain that that would be one of the considerations that would be brought before him, either by the Governor, the EPA Administrator, or his own staff. Certainly, we do not want the plants to close down. The alternative then would be available, if there were no other possibility, as suggested by the Senator from Indiana (Mr. BAYH), that if it could not be done, the low sulfur coal would have to be used.

Mr. GLENN. One other consideration I should like to ask about, to see whether it was considered.

There was a study some time ago—I do not recall whether it was a Government study or an industry study, or what the source of it was, but I recall reading it—which indicated that not all plants can use all kinds of coal because of the different Btu capacities of the different kinds of coal. Even some of our Ohio coal varies widely so far as the Btu equivalency is concerned, and certainly varies widely compared with the western coal.

Is there any information as to whether all our plants in Ohio and the other affected States can use this type of coal in their boilers, or is there a certain factor by which they have to have coal of a certain Btu capacity?

In other words, is there a capability so that they can shift to low-sulfur coal if they have been using the low-sulfur western coal and have been using scrubbers? Can all the boilers take our high-sulfur coal?

Mr. METZENBAUM. Almost all the Ohio plants were built originally for the use of high-sulfur coal, so that I am not concerned about their not being able to use the coal. The question is whether or not they can comply with the EPA standards.

The real question to which this amendment addresses itself is the question whether in complying, they go out and get low-sulfur coal from the West and import it at a higher price, or whether they use Ohio coal and, if necessary, use scrubbers or wash the coal.

Mr. GLENN. I thank the Senator.

Mr. STAFFORD. Mr. President, will the distinguished Senator from Ohio yield for a question?

Mr. METZENBAUM. I yield for a question.

Mr. STAFFORD. Mr. President, if I understood the distinguished Senator from Ohio correctly in his colloquy with his colleague, the other distinguished Senator from Ohio, he said that high sulfur coal could be used with scrubbers in Ohio less expensively than through the use of imported, out-of-State, coal. Did I understand the Senator correctly?

Mr. METZENBAUM. High sulfur coal coming from Ohio, with the utilization of scrubbers, could be used at a lower cost than low sulfur, including the transportation costs, as determined by a report made by the Environmental Protection Agency.

Mr. STAFFORD. Assuming that that is so, I say to the distinguished Senator, I have to wonder why this amendment has been offered, since apparently the laws of economics would result in achieving the very end that the Senator's amendment seeks. I ask the Senator why his amendment is necessary, when he can make that statement.

Mr. METZENBAUM. The question is an appropriate one.

As I indicated in my original statement in support of this measure, there are Ohio utilities and utilities in other parts of the Nation—American Electric Power Co. is not an Ohio utility: it is the largest investor-owned utility in the Nation—that have indicated in testimony before our Energy Committee that they were using coal at a cost of $40 a ton when they could have used coal costing $22 a ton which complied with the EPA standards. However, because they had the coal and it was coming from their mines in Montana, I think, they felt that they should use it. It really had no economic impact on them because it related to a fuel cost adjustment which they were able to pass onto the consumers at a higher cost.

The Senator's question is appropriate. But the fact is that the utilities are the ones, as Senator BAYH pointed out, who have been making this determination, not in the interests of the consumer but in their own interests, relating to their investment in coal mines.

Mr. STAFFORD. I thank the distinguished Senator for his answer.

Mr. President, I yield myself 1 minute on the bill to comment that I have listened to the debate on this amendment with a great deal of interest, and I have to say, with regret, to the distinguished authors of the amendment that I am unable to support it.

In the first place, it does not seem to this Senator that there is any reasonable likelihood of a loss of jobs in the mining industry when, as my colleagues have pointed out, the tonnage of mined coal is anticipated to increase steadily in this country from 600 million tons to 1.2 billion tons in the foreseeable future.

Vermont, the State I have the honor to represent, has no coal, so this Senator has no interest, other than academic, in the best possible legislation in this clean air bill.

I do not feel that this amendment appropriately should be in a bill which is basically a clean air bill.

I have to repeat that it is difficult for this Senator to understand why the amendment is necessary, when it appears that the laws of economics would solve the problems which the Senator seeks to resolve through the amendment.

Finally, it seems to this Senator to be questionable to potentially tie utilities, both public and private utilities, in many parts of the country to 10-year contracts to purchase, in effect, high sulfur coal at a time when we are not sure that sufficiently adequate scrubbers can be produced to cope with the level of sulfur contaminants that might be involved.

For all those reasons, Mr. President, I am unable to support this amendment.

Mr. JACKSON. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. STAFFORD. I yield.

UP AMENDMENT NO. 397

Mr. JACKSON. Mr. President, I ask unanimous consent to offer a technical amendment, not in connection with the amendment of the Senator from Ohio, but out of order. It is noncontroversial and will take only a moment. If the Senator from Ohio will yield for that purpose, I will appreciate it.

Mr. METZENBAUM. I yield.

Mr. JACKSON. Mr. President, I call up the amendment which is at the desk.

The PRESIDING OFFICER (Mr. SASSER). The amendment will be stated.

Mr. METZENBAUM. Mr. President,

am I correct in assuming that this time is not charged to either side?

The PRESIDING OFFICER. The Senator is correct.

Without objection, the amendment is in order.

The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Washington (Mr. JACKSON) proposes unprinted amendment numbered 397.

Mr. JACKSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 19, between lines 17–18, insert the following new subparagraph:

"(D) the term "necessary preconstruction approvals or permits" means those permits or approvals, if any, required as a precondition to undertaking any activity relied upon by an owner or operator to satisfy the requirements in clauses (i) or (ii) of subparagraph (C) of this paragraph."

Mr. JACKSON. Mr. President, the amendment is designed to clarify the meaning of the words "necessary preconstruction permits or approvals" appearing on line 1 of page 19.

The amendment states that the necessary permits are those required as a precondition to undertaking any activity relied upon by an owner or operator of a major emitting facility to satisfy the requirements in clause (i) or (ii) on page 19. Without this amendment the meaning of the word "necessary" may be ambiguous.

This amendment would also clarify the relationship between this legislative action and some litigation with respect to Colstrip units 3 and 4 in Montana. If the court finds that the activities undertaken by the owners satisfy the tests in clause (i) or (ii) on page 19, and the owners obtained permits required to be obtained to undertake those activities, then construction could proceed without waiting for additional EPA approval.

Mr. President, this is a matter of confusion in the wording, and I think it will help to clarify the meaning of this particular provision of the bill, which starts at the bottom of page 18, line 24, in the definition of the term "commenced."

Mr. MUSKIE. I have discussed this matter with the distinguished Senator from Washington. On the basis which he has briefly outlined, I am prepared to accept the amendment. It is consistent with the intent of the committee in drafting this definition of "commenced construction." The committee was interested in whether the owner or operator of a proposed facility had the preconstruction permits, certificates, or clearances which would have justified the sizable commitments necessary to meet the tests of a continuous program of physical construction or obligations which cannot be canceled without substantial loss. If an owner of a proposed facility can demonstrate that he had all the air quality-related clearance necessary to construct the facility, and was not making the commitments involved entirely at his own risk, before he could be assured that construction could legally take, then such physical construction or contractural obligations might be deemed to have commenced construction within the meaning of this definition.

It should be added that for a contractual obligation to qualify a source as having commenced construction, the definition requires that the obligation be in connection with a continuous program of construction. Only continuous and significant site preparation work, such as major clearing or excavation or placement of unique facilities at the site should be considered a program of construction. All necessary air pollution, emissions, and air quality approvals or permits required for such activities would be required by this clarifying amendment.

In addition, even permits or approvals that are not preconditions for these activities would be relevant in determining whether or not a company had commenced construction. This continues current policy under existing regulations.

Mr. McCLURE. Mr. President, I am not certain I understand what this amendment does.

Mr. JACKSON. May I just say to the distinguished Senator if he will refer to page 18, the bottom of the page, starting on line 24, the definition that is in question here is "the term 'commenced' starting on line 24," as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits by Federal, State, or local laws, and so on.

What we are endeavoring to do here is to clarify the meaning of the words "necessary permits." And the problem here relates to the meaning of "necessary permits" in the existing law.

I would say that in this particular case the utilities, a number of them, which are acting in concert, obtained a permit from the State of Montana and the matter got into court over the issuance of the EPA permit, and they brought suit against EPA.

The net effect of it was that the district court held that they came within the act.

There is simply a technical question as to the definition here of the word "necessary" and it is very, very clear that the present situation is ambiguous. They have completely complied with the law.

The purpose of the amendment is to expedite action so that we can get an early resolution and not delay the issuance of the EPA permit. Of course, it does not prejudice the litigation that is pending. All the issues in the litigation are preserved.

Mr. President, I ask unanimous consent that a quorum call may be in order and that it not be taken out of the time of any of the participants.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, my understanding of this amendment is that it again attempts to further define what we attempted to define in the committee in terms of how much of a commitment, how much of a change in position, is necessary in order to qualify under the grandfather clause of the act.

This is intended to further define a particular condition in which a permit, not being required at the time, in litigation in the court, and regardless of the outcome of that court litigation, the permit cannot now be required, and we are, in effect, saying that they have gone far enough if they have complied with this amendment, and I think, it seems to me at least, to be in accordance with the intention of the committee, and I have no objection to the amendment.

The PRESIDING OFFICER. Do all Senators yield back their time?

Mr. JACKSON. I yield back my time.

Mr. MUSKIE. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Washington.

The amendment was agreed to.

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD and Mr. DOMENICI moved to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 379

The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Ohio. Who yields time?

Mr. METZENBAUM. Mr. President, are there other Members who wish to speak in opposition to the proposed amendment?

Mr. President, I yield 15 minutes to the distinguished chairman of the committee, the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, the characterization attributed to this amendment as being a Balkanization is, of course, incorrect. A Balkanization is a cutting up of the pie and a constancy of warring among people.

That is not what this amendment would even slightly bring into being. In fact, it will do just the opposite. It would be a palliative rather than an instrument of warring between sections of one State or even the country in reference to the use of coal.

I recall that my able colleague from Vermont, Senator STAFFORD, has questioned the knowledgeable Senator from Ohio (Mr. METZENBAUM) about the fact that, more miners are going to be hired in the future. There are certain sections where this situation applies, where there has been a loss of employment for miners.

In one county alone in West Virginia a possible loss of perhaps 1,400 miners was possible because of the importation

of coal rather than using that available nearby.

Mr. STAFFORD. Mr. President, will the distinguished Senator, the chairman of my committee, yield to me for a brief second, and that is all?

Mr. RANDOLPH. I yield gladly.

Mr. STAFFORD. I thank the Senator.

I just wish to point out that what principally intrigues me was the statement of the principal sponsor of the bill, Senator METZENBAUM, that low sulfur coal could be consumed in the utilities in Ohio at an economically advantageous price vis-a-vis imported coal. That caused me to inquire of him why he offered the amendment. That was my principal purpose.

Mr. RANDOLPH. I understand the question.

I only say we are not thinking of importation even from another area of the country, the West against the East. West Virginia has faced this situation in connection with coal from Kentucky. So this is, of course, a question that all of us in an attempt certainly to discuss this amendment would want the full facts known.

We have heard—and Senator BAKER is not in the Chamber at the present time, but I know that he would understand my reference and I would make it if he were here—the language on this matter of scrubbers. It was indicated that we had to order a large number of scrubbers and do it very quickly. That is not necessarily true.

The language is "enter into contracts to acquire any additional means of emission limitation * * *." It does not even mention scrubbers. It does not mention any particular type of cleaning techniques.

Listen to this language following ". . . which the President or his designate determines may be necessary to comply"—and I say to the able chairman of the subcommittee on environmental pollution (Mr. MUSKIE) to meet the requirements of this act; we are not trying to vitiate the act in any sense—

So, I am grateful to the knowledgeable Senator from Ohio (Mr. METZENBAUM) for giving me the opportunity to join with him as a cosponsor of this legislation.

I have listened very carefully to all of those who have spoken. We have had quite an array, a very powerful group, speaking against this amendment, and that is all right. We are not going to fall back because of that. We are not going to get worried about it because the facts are with us in connection with this amendment.

Senator METZENBAUM, knowledgeable; Senator HEINZ, knowledgeable; Senator BAYH, knowledgeable; Senator GLENN, knowledgeable; and I hope I am knowledgeable in reference to these matters that we are discussing.

Mr. President, it is widely recognized that the energy concerns of our country can substantially be alleviated by the expanded use of coal—That is very frankly what we are talking about—and making arrangements for the use of coal.

We have vast supplies of this fuel. We need to expand the use of coal. This is practical.

In 1943, with another young man, on November 6 of that year, I was flying in a single-engine plane from Morgantown, W. Va., across the Alleghenies and the Blue Ridge to the Washington National Airport. What were we using? We were using aviation fuel processed from West Virginia coal.

The tragedy of all these years is the nonuse of coal. After the fact—that is the way we do it so often in this country, when you see we could have done it so long ago. We knew it then. We developed the Synthetic Liquid Fuels Act and the submarines prowling around the east coast went home. The people of this country went back to doing their jobs thinking there was no problem whatsoever. Now new problems have arisen and I do not need to delineate them. The embargoes and all of these matters have found us what? In the very shortest of supply.

When we talk about coal, we talk about its profitable use, not only profitable to a large company but to the small company because very frankly it is the small coal company that is involved in the matters that I discuss.

Do we need to utilize coal? Why certainly we need to more fully utilize it, to reduce our growing use of costly foreign oil and our diminishing supplies of natural gas.

I say to all Members of the Senate and to those who are listening to this debate that it is a tragic situation when 51 percent of all the petroleum products used in this country are coming from other countries. This is a situation which could leave us within an hour or a day or a month at the feet of those who would want America, with all of its strengths, inventiveness, creativity, resourcefulness which have not been used to take care of the problems of energy within our own country, in dire straits.

Yes, I do not believe, as I have said on innumerable occasions, that the greater use of coal should be undertaken at the expense of a clean environment.

I can stand here, of course, with any Member of the Senate, any member of our committee, and document that as a fact. I am not speaking against a clean environment when I speak in favor of this amendment, and I say to my friend from Ohio (Mr. METZENBAUM) I am very appreciative of the fact that I can cosponsor this amendment with other Members who have joined with him.

We know that coal can be mined and burned in environmentally sound ways. We know that to be a fact. We have followed that belief in developing the substantial body of law that we are dealing with in these Clean Air Act amendments. I think the debates have been helpful. The discussions have been informative. We have worked our way, but we must provide what is necessary, I say to my colleagues, to facilitate the greater use of coal within the goals set for air quality protection.

We are not moving away from air quality. We are trying to work within the very structure of the Clean Air Act to bring about the use of coal.

Pollution controls must be applied so that the burning of more coal will not result in an equivalent increase in pollution. One of the basic truths of our Clean Air Act is its commitment to the use of continuous controls to keep pollution levels within proper boundaries, and I believe that.

We believe that the technology exists to permit the burning of coal without environmental damage. In certain instances, installations that use coal are attempting to meet air quality standards by using low-sulfur coal. That can be a correct approach and a practical approach. But it can cause hardship and local economic disruption.

There have been instances when users have chosen to import coal from other States and other parts of the country, even when an ample supply of coal was very close at hand. The local coal, however, had a higher sulfur content. Burning it would have required the installation of pollution control equipment—a step some users, very frankly, are unwilling to take.

Mr. President, cases such as I have described have occurred in West Virginia. I am not provincial in bringing this to the attention of the Senate. Coal companies in my State have been—and I underscore these words—bypassed in favor of bringing lower-sulfur coal from outside the State of West Virginia. Even our local low-sulfur from West Virginia has not been used.

Mr. President, I do not believe that we should create a situation in which there is conflict and competition, as it were, between eastern and western coal. I do not believe in that. I am against it. We do not need that type of polarization, as we attempt to cope with a continuing and worsening energy crisis in this country.

Yes, there will be ample need for coal from all areas of the United States as we move forward in expanding the usage of coal. Mr. President, users of coal should take advantage of the supplies which are most readily available.

The Senator from Ohio (Mr. METZENBAUM) and the other Senators who have spoken and those that we hope will support our amendment recognize this problem.

Someone may believe this is not the place for this amendment. It is the place. There may be, and I am sure there are, other places for such a treatment as we propose, but that does not mean this is not the place. This is the place, this is the time, this is the occasion; so we should not pass it by.

What do we do in connection with this proposal? We would permit the President to direct the plants to use locally or regionally available coal, and to install, as I have read from the language of the amendment itself, whatever controls are necessary to comply with air pollution requirements. Such a directive could be used, and I stress these words, only after a finding that economic hardship would result locally from the use of coal from other areas.

I think it is important to stress that

it is not necessarily the larger coal companies that are involved in whatever is done here. We know that there are small coal companies that are hurt by the importation of coal from other areas.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. METZENBAUM. Mr. President, may I ask how much time I have available?

The PRESIDING OFFICER. The Senator from Ohio has 13 minutes remaining.

Mr. RANDOLPH. May I have 3 minutes?

Mr. METZENBAUM. Three minutes, fine.

Mr. RANDOLPH. These large companies frequently have stable, long-term contracts. I would remind the Senate, as I have said so many times today, that it is the small local companies that are hurt. It is not always a case of eastern consumers going West for low-sulfur coal. I come back to West Virginia, because a user there ignored local coal supplies and went—not to the West, not Montana, Utah, nor any Western State—that user went no farther than the neighboring State of Kentucky to buy low-sulfur coal. To avoid what? To avoid installing controls.

That is what we are after, controls where necessary; and this user did not even try to obtain low-sulfur coal from another section of the State of West Virginia.

Mr. President, in conclusion, issues relating to energy and environmental protection very often overlap. This is inevitable, and as I have indicated again and again, we have worked in the Committee on Environment and Public Works to structure the Clean Air Act to energy needs as well as other needs in a reasonable manner when required.

So the pending amendment would help. It does not rip apart, it helps to structure that adjustment. It would have the obvious benefit of encouraging the use of locally available coal. At the same time, it would reduce the pressure to weaken the requirements, I say to the Senator from Maine (Mr. MUSKIE) and others, of the Clean Air Act by those who would resist the installation of emission control equipment.

This is a balanced approach to the problem. I urge the adoption of the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. MUSKIE. Mr. President, let me say to the Senator from Ohio that I guess I have 32 minutes left. I do not expect to use 95 percent of that time. At the appropriate time, I will indicate my own position briefly, but at this time I do not have anyone else on this side who is interested in engaging in extensive debate. If the Senator from Ohio wishes to consume more of his time at this point, this would be the time to do it.

Mr. METZENBAUM. I did not know; I thought perhaps the distinguished Senator from New Mexico wanted to speak further.

Mr. DOMENICI. I have indicated to the chairman I just want 1 minute, or one and a half, to sum up; so I will wait at this time.

Mr. METZENBAUM. Mr. President, I yield myself 4 minutes.

I have sat here and listened with interest, and am very appreciative of the support received from the very able chairman of the Environment and Public Works Committee, the distinguished Senator from Pennsylvania, and the senior Senator from Ohio. I would like to comment a little bit about some of the arguments that have been made in opposition to this legislative proposal.

Senators talk about economic Balkanization. Well, if you call something a name, you no longer have a problem about it, because that does not sound right. But there is nothing in this legislation that is anything more than economic self-preservation. It only becomes applicable, can only be used in those instances where economic disruption or unemployment would be a reality of life.

There was some question about all of the increased coal production that may take place, and that the miners would not be out of work.

I have in my hand the publication called Coal, an energy publication. It is the coal monthly for February 1977. It has an entire issue addressed to the problem that some 15,000 miners may become out of work and thousands of others affected. As a consequence, they write an entire paper on the whole subject of unemployment.

Of course, if there is no unemployment the amendment will not be applicable. The only time the amendment can become applicable is when the Governor or the EPA Administrator, or the President himself, determines that there would be severe economic disruption or severe unemployment. Then and only then would the President have the right to take some action in order to preserve the economy.

The suggestion has been made that 10-year contracts would be terrible.

Let me say the President is not limited to 10 years. He has the right to use the figure of 10 years, or any other period that he determines. That is his right and the language is very clear. It says:

> Enter into long-term contracts of at least 10 years in duration (except as the President or his designee may otherwise permit or require by rule, or order for good cause).

Then it goes on to talk about the supplies of local coal.

Yes, it is true it is contemplated there would be some stability in the industry, but it is not contemplated that it would have to be 10 years, 15 years or 20 years, if the President determines that a shorter period should be used.

The question has been raised: Does this amendment belong in this bill? Is it inappropriate for a measure having to do with clean air to have an amendment such as this?

I can only answer by pointing out that Mr. PAUL ROGERS, chairman of the Environmental and Health Subcommittee of the House, is the author of an amendment in the legislation in the House which actually goes a bit further than does this amendment.

If the chairman of the committee on the House side, which has responsibility for the environment and health, and who was the manager of the bill on the House floor, determined that it was appropriate to put it in, certainly I believe we in the Senate can recognize that it is appropriate that it be included in the bill at this point.

The Senator from Vermont very appropriately asked me a question about why the utilities do not buy at a lower rate. I can only respond that there are many things the utilities do which I do not understand. There is a Library of Congress report as well as a special report from the Environmental Protection Agency, dated May 6, 1976.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. METZENBAUM. I allow myself an additional 2 minutes.

Both reports arrive at the same conclusion.

The 1977 report, which was prepared by the EPA, has language in it as follows:

> A comparison of costs indicates that the FGD option is attractive over the low sulfur coal and medium sulfur coal options primarily because of the higher cost of the low and medium sulfur coal.

I can only answer the Senator, on the basis of those reports and studies which have been made, that the utilities have that option but apparently are not willing to make the capital expenditures which may be required if they are to use the higher sulfur coal in some instances.

The Senator from Tennessee addressed himself to the question of ordering scrubbers. The Senator from Indiana appropriately pointed out there is nothing in this legislation which requires the use of scrubbers, although that may be an incidental result.

In the last analysis, there is only one issue before the Senate on this matter. That is, are we going to permit economic disruptions and unemployment to occur in a part of the country which has its own resources at the present time if alternatives are available? Are we going to permit the utilities to make a determination to go elsewhere and buy their coal, or if the economics of the situation require and it becomes a necessity are we going to trust the President to protect the regional areas which presently have coal and which may not be in a position to use it by reason of the unwillingness of their utilities to use that local coal?

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. MUSKIE. Mr. President, I yield 2 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I am delighted that the Senator from West Virginia returned to the Chamber. I have been with him on many occasions, meeting with many people from all parts of this Nation. It is obvious that he represents the State of West Virginia very well. I will say no more.

Now with reference to one other item, I believe it is an error to suggest that the facts are conclusive as to whether or not it is cheaper to try a different source of

fuel, such as low sulfur coal versus high sulfur coal with scrubbers put on to retrofit existing plants. I do not think the evidence is anything like as conclusive as the Senator from Ohio is saying. He is saying that it would have been cheaper in Ohio for them to use high sulfur coal and put on scrubbers.

I am not going to argue about his State on that set of facts, and I am not going to produce a litany of the facts that I recall about another situation in our country, another region with the same facts.

I will say that in our committee we have jurisdiction over TVA, as the distinguished manager of the bill and ranking Republican know better than I. The unequivocal evidence from TVA is that it will cost substantially more for them—I do not know about Ohio—to put scrubbers on their present coal burning utility plants owned by the TVA, serving the people of those States. In fact, the evidence they give is in justification of a somewhat different approach that they would like to take, which I believe will come before us sooner or later.

They say that if they were forced, not by a Presidential order in their case but forced by the technology-pushing requirements of our law, to do that in any shorter period of time, the economics are exactly the opposite of what we have been told here in the Senate. It will be far more expensive both by way of capital outlay and annualized expenditures of operation and maintenance and debt service of the capital improvements.

I think there may be a reason beyond the uncertainties which have burdened Ohio for that State's utilities, private and public, not to have gone quickly to high-sulfur coal with scrubber technology.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. I ask for 1 additional minute.

Mr. MUSKIE. I yield 1 additional minute.

Mr. DOMENICI. Whatever value my recommendation is to the Senate, I know with reference to the TVA it is exactly the opposite with reference to cost to go from present coal-burning plants to high-sulfur with scrubbers retrofitted onto them.

I thank the manager of the bill for yielding me the time.

Mr. MUSKIE. Mr. President, I rise not for the purpose of provoking further debate. I very carefully let others carry that burden.

As floor manager of the bill, I must state my position. I do not do so for the committee. The committee has not taken a position on this bill. That must be evident from the identity of those who have spoken on both sides of the issue this afternoon. The chairman of the full committee has spoken for the amendment. The ranking Republican member and other members have spoken against it. I am going to vote against the amendment. I have done my best to see its merits and to vote for it because I have been requested to do so by the distinguished Senator from Ohio, and because my own distinguished chairman is a cosponsor of the amendment.

I cannot support it for reasons I will state very briefly that should not take more than 30 seconds.

First of all, I do not make the argument that the amendment does not belong in this bill. I have been a Member of the Senate too long to argue that anything does not belong on a bill. We can put anything on any bill, whatever its relevance or irrelevance. But I must say that in my judgment the dominant thrust of this amendment is not its relationship to clean air, but its relationship to the economics of the areas it is designed to protect.

For that reason, I regret that it is being offered to a clean air bill.

There is not any reason why it cannot be offered to a clean air bill. I am not against its connection to a clean air bill. But I do not see its dominant thrust as related to the clean air bill.

Second, I must say in all candor that, as I recall my American history, the Constitutional Convention was the result of the fact that 13 colonies were busily erecting trade barriers against each other. I do not think we want to get to another constitutional convention. I just see this as a first step, benign as its intentions are, as a first step in that kind of regionalization, around regional economic interests. It disturbs me a great deal.

It is a propensity we all find in all of our regions and all of our States from time to time.

For that reason, I will oppose it.

Third, insofar as its mechanisms are concerned, I think they could stand some refinement if, in fact, the Congress were finally to decide that the policy it represents is a good one.

I just find it difficult to justify this kind of approach to the achievement of clean air goals required in any State's implementation plan.

But, in any case, those are my reasons. I have not belabored them. I have not said anything that has not been said earlier this afternoon.

Mr. President, I am prepared to yield back the remainder of my time and proceed to vote.

Mr. METZENBAUM. Mr. President, I yield myself 2 minutes.

I would like to respond and say to the distinguished Senator from Maine that I do appreciate the position he has taken and his fairness in doing so.

I want to point out that such prestigious groups who have a concern with the whole question of clean air as the National Clean Air Coalition, the Environmental Policy Center, and the Sierra Club, have all come out formally in support of this amendment.

Those groups that are concerned with jobs, such as the United Mine Workers, who are directly concerned, the AFL-CIO, the United Steel Workers of America, the United Transportation Union, all of them have indicated their support of this amendment.

Last, but not least, ConRail has indicated its support.

Now all we need is the support of a majority of the Members of the U.S. Senate.

Mr. President, I yield back the remainder of my time.

Mr. MUSKIE. Does the Senator want a yea and nay vote?

Mr. METZENBAUM. A rollcall vote.

The PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. SASSER). All time has been yielded back. The question is on agreeing to the amendment of the Senator from Ohio. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) would vote "nay."

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from Illinois (Mr. PERCY), the Senator from Texas (Mr. TOWER), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Texas (Mr. TOWER).

If present and voting, the Senator from Oregon would vote "yea" and the Senator from Texas would vote "nay."

The result was announced—yeas 45, nays 44, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—45

Allen	Heinz	Nelson
Bayh	Hollings	Pell
Biden	Huddleston	Proxmire
Brooke	Humphrey	Randolph
Byrd, Harry F., Jr.	Inouye	Riegle
Byrd, Robert C.	Johnston	Sarbanes
Clark	Kennedy	Sasser
Cranston	Lugar	Schweiker
Culver	Mathias	Scott
DeConcini	Matsunaga	Sparkman
Durkin	McGovern	Stennis
Eagleton	McIntyre	Stevens
Eastland	Metcalf	Stone
Ford	Metzenbaum	Zorinsky
Glenn	Morgan	
	Moynihan	

NAYS—44

Abourezk	Chiles	Griffin
Baker	Church	Hansen
Bartlett	Curtis	Hart
Bellmon	Danforth	Haskell
Bentsen	Dole	Hatch
Bumpers	Domenici	Hathaway
Burdick	Garn	Hayakawa
Cannon	Goldwater	Helms
Case	Gravel	Jackson

Javits	Nunn	Stevenson
Laxalt	Packwood	Thurmond
Magnuson	Pearson	Wallop
McClure	Roth	Williams
Melcher	Schmitt	Young
Muskie	Stafford	

NOT VOTING—11

Anderson	Long	Talmadge
Chafee	McClellan	Tower
Hatfield	Percy	Weicker
Leahy	Ribicoff	

So the amendment was agreed to.

(Later in the day the following occurred:)

Mr. MAGNUSON. Mr. President, on the vote on the Metzenbaum amendment, I voted "no," but I understand the tally shows that I voted "yes."

I ask unanimous consent the RECORD be changed to a "no" vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The foregoing tally reflects the above unanimous-consent request.)

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH and Mr. HANSEN addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for a question?

Mr. METCALF. Mr. President, may we have order.

Mr. HANSEN. I just wanted a rollcall, the yeas and nays.

Mr. METZENBAUM. The vote has been announced.

Mr. HANSEN. I tried to obtain recognition.

How did the Chair rule?

The PRESIDING OFFICER (Mr. DURKIN). Was the Senator seeking recognition before, in his opinion, the Chair announced the vote?

Mr. HANSEN. Before the vote was announced on the motion to table the motion to reconsider, I was.

The PRESIDING OFFICER. In that case the Senator, under the precedents, would be entitled to recognition.

But might I ask in what form was the Senator seeking recognition?

Mr. HANSEN. By asking for a rollcall.

The PRESIDING OFFICER. The Chair did not hear.

Mr. HANSEN. Well, Mr. President——

The PRESIDING OFFICER. The Senator has an usually good voice. [Laughter.]

Mr. HANSEN. Perhaps it would be helpful to the Senator from Wyoming if we had order.

Mr. ROBERT C. BYRD. Mr. President, the Chair announced the vote, but if the Senator was seeking recognition to ask for a yea-and-nay vote, I would ask unanimous consent that the announcement of the vote be withdrawn so that the Senator may ask for that vote.

The PRESIDING OFFICER. Is there objection to that request?

Mr. METZENBAUM. Reserving the right to object——

Mr. ROBERT C. BYRD. I may say to the Senator that I voted with the Senator from Ohio. May I also say, in fairness, that there was so much pandemonium that it was difficult for a Senator to seek recognition. This is no fault of the Chair, but if the Senator was seeking recognition, I take his word for it, and if he was seeking recognition——

Mr. METZENBAUM. I have no objection.

The PRESIDING OFFICER. Does the Senator ask for the yeas and nays?

Mr. HANSEN. I do.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the amendment was agreed to.

The clerk will call the roll.

Mr. ROBERT C. BYRD. The question is on——

The PRESIDING OFFICER. The question is on the motion to lay on the table the motion to reconsider.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. RANDOLPH. Mr. President, I respectfully ask the following question: For those favoring the amendment, which has just been approved, is a yea vote on the coming rollcall a vote for the amendment?

The PRESIDING OFFICER. Those favoring the amendment, favoring the position of the Senator from Ohio, will vote "yea."

Mr. BAKER. Mr. President, point of order. I make a point of order that the Chair is entitled only to state the proposition before the Senate and not to interpret it.

Mr. ROBERT C. BYRD. Mr. President, without any criticism of the Chair—I have great respect for the Chair—but the minority leader is right. It is not up to the Chair, and again I say I am not making this point with reference to the present occupant—it is not up to the Chair to interpret the vote.

The vote is on the motion to table the motion to reconsider the vote by which the Metzenbaum amendment was adopted.

The PRESIDING OFFICER. That is correct. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. MELCHER), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF) would vote "yea."

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Oregon (Mr. HATFIELD), the Senator from Illinois (Mr. PERCY), the Senator from Virginia (Mr. SCOTT), the Senator from Texas (Mr. TOWER), the Senator from Connecticut (Mr. WEICKER), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Texas (Mr. TOWER). If present and voting, the Senator from Oregon would vote "yea" and the Senator from Texas would vote "nay."

The result was announced—yeas 43, nays 42, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—43

Bayh	Huddleston	Pell
Biden	Humphrey	Proxmire
Brooke	Inouye	Randolph
Byrd, Robert C.	Johnston	Riegle
Clark	Kennedy	Sarbanes
Cranston	Lugar	Sasser
Culver	Mathias	Schweiker
DeConcini	Matsunaga	Sparkman
Durkin	McGovern	Stennis
Eagleton	McIntyre	Stevens
Eastland	Metcalf	Stone
Ford	Metzenbaum	Williams
Glenn	Morgan	Zorinsky
Heinz	Moynihan	
Hollings	Nelson	

NAYS—42

Abourezk	Dole	Laxalt
Allen	Domenici	Magnuson
Baker	Garn	McClure
Bartlett	Goldwater	Muskie
Bellmon	Gravel	Nunn
Bentsen	Griffin	Packwood
Bumpers	Hansen	Pearson
Burdick	Hart	Roth
Byrd, Harry F., Jr.	Haskell	Schmitt
	Hatch	Stafford
Cannon	Hathaway	Stevenson
Case	Hayakawa	Thurmond
Church	Helms	Wallop
Curtis	Jackson	
Danforth	Javits	

NOT VOTING—15

Anderson	Long	Scott
Chafee	McClellan	Talmadge
Chiles	Melcher	Tower
Hatfield	Percy	Weicker
Leahy	Ribicoff	Young

So the motion to lay on the table was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

The PRESIDING OFFICER. Such a motion is not in order.

The Senator from Utah is recognized.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on Mr. HATCH's amendment, or series of amendments, be limited to a period of 30 minutes.

The PRESIDING OFFICER (Mr. MATSUNAGA). Without objection, it is so ordered. The Senator from Utah is recognized.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield again?

Mr. HATCH. Yes.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from New York (Mr. JAVITS) be recognized for the colloquy to which we earlier alluded immediately following the disposition of the amendments by Mr. HATCH, with the understanding that the time for the colloquy be reduced from 10 minutes to 5.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I yield to the Senator from California for a unanimous-consent request.

Mr. HAYAKAWA. Mr. President, I ask unanimous consent that my staff members John Backer, Elvira Orly, and Mary Goedde have the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, before I offer my unprinted amendment, I would like to ask the distinguished managers of this bill, the Senator from Maine (Mr. MUSKIE), and the Senator from Colorado (Mr. HART) as well, on the Jackson "technical amendment" that was passed a while ago by voice vote, am I correct in understanding that the effect of that "technical amendment"——

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield myself such time as I may require.

The PRESIDING OFFICER. Unless the Senator is offering his amendment, he does not have any time.

Mr. HATCH. Will the Senator from Maine yield some time for me to ask this question? Then I would like to go into my amendment.

Mr. MUSKIE. How much time?

Mr. HATCH. Two minutes.

Mr. MUSKIE. Ten minutes?

Mr. HATCH. Two minutes.

Mr. MUSKIE. I yield the Senator 2 minutes.

The PRESIDING OFFICER. The Senator from Utah is recognized for 2 minutes.

Mr. HATCH. On the Jackson technical amendment, am I correct in understanding that the effect of this technical amendment is to exempt some powerplants that are going to use the coal from certain coal-stripping operations, notably in Montana, from the significant deterioration provisions of this bill by grandfathering them? Is that correct ?

Mr. MUSKIE. I am afraid I do not know what amendment the Senator is referring to.

Mr. HATCH. The one passed by voice vote that Senator JACKSON offered on the floor today, about an hour ago.

Mr. MUSKIE. That is not my understanding of it; no.

Mr. HATCH. That is my understanding. It is what I have been told.

Then let me ask the Senator this question: Is not the purpose of the coal-strip operations to feed the powerplants that serve the State of Washington?

Mr. MUSKIE. Will the Senator repeat his question?

Mr. HATCH. Is not the purpose of the Montana coal-strip operations to feed powerplants which will serve the State of Washington?

Mr. MUSKIE. I think the Senator ought to direct his question to the distinguished Senator from Washington, whose amendment it was, and who knows more about the background of the situation than I do. I would have to refer the question to him.

Mr. HATCH. Let me ask Mr. HART the question.

Mr. HART. No; I do not have the answer. I think the Senator from Maine is correct, that the question should be addressed to the Senator from Washington.

Mr. HATCH. Would it surprise the Senator if they were?

Let me ask Senator McCLURE. May I have the attention of the Senator from Idaho? May I ask the Senator the question, as one of the leaders on the bill? I would just like to ask, on the Jackson technical amendments, am I correct in understanding that the effect of this, as I said before, technical amendment is to exempt certain plants which use coal from coal-stripping operations, notably in Montana, from the significant deterioration provisions of the bill by grandfathering the plants?

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. McCLURE. Mr. President, will the Senator from Vermont yield me enough time that I might be able to answer the question?

Mr. STAFFORD. The Senator from Vermont will be glad to yield the Senator time on the bill.

Mr. MUSKIE. Mr. President, may I interject at this point——

The PRESIDING OFFICER. How much time does the Senator yield?

Mr. MUSKIE. I yield myself such time as I may require to interject a remark on the issue as it was presented to me in connection with the technical amendment. Then the Senator can take it as far as he wishes with Senators who know more about the technical background.

But as I understand, as staff has presented it to me, the question that was involved was whether or not the term "commenced construction" as defined in the bill had an effect on certain judicial proceedings that are now underway in a procedure in the State of Washington or Montana. The effect, as explained to me, was to neutralize the bill's effect on that judicial proceeding.

Other than that, I know nothing about the background of Montana coal, how it is being utilized, or what markets it is serving. I take it that is, in part, an issue in the judicial proceeding, and if it is, I assume there is a complicated factual situation to which I have not been exposed. The one issue to which I was exposed was to insure that the words "commenced construction" were neutral to that judicial proceeding. But the Senator from Idaho knows more about it than I do in terms of the circumstances, and maybe he can put that in context.

Mr. McCLURE. I would like to answer the question, and then make a few comments.

Mr. MUSKIE. I yield the Senator from Idaho 2 minutes.

Mr. McCLURE. I thank the Senator from Maine.

If the Senator will recall, at the time the amendment was about to be adopted, I did reserve the right to object long enough to get an explanation. I am not certain I understand all the relevant facts of that amendment, either, but my understanding of the amendment is that it is not simply a question of being neutral in the legal proceedings. It does not override the legal proceeding, but it does amend the bill enough to make certain that in the event the legal proceedings come out in one way, the EPA could not then raise the question of whether or not this statute would then require a permit procedure which was not required at the beginning of their process.

I do not think, in my understanding of it, it would be fair to characterize it as an exemption from significant deterioration. It would have to do with the technical, procedural aspects of the application in that instance. It was intended to further the committee's intention that those that had at least a substantial movement toward completion already underway would not now be caught in a new procedure required under this bill.

Mr. HATCH. Will the Senator yield to me for additional questions? Will the Senator yield such time as I need, not to exceed 3 minutes, to ask additional questions?

Mr. MUSKIE. I am happy to yield time.

Mr. HATCH. I thank the Senator.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. HATCH. What the Senator seems to be saying is that assuming the law is written a certain way, this would grandfather certain plants which would possibly benefit the State of Washington.

Mr. McCLURE. Let me respond to the Senator from Utah in this way: If, as a matter of fact, the lawsuit were to result adversely to the applicant in that instance, the EPA could not then, under this amendment, go back and require a permit which is required under this bill, which was not required under law at the time they commenced their operations and before they got involved in the court litigation.

Mr. HATCH. That is a concession which would directly benefit not only Montana but also Washington?

Mr. McCLURE. It would benefit the operation in Montana that affects four operating utilities in the Northwest, primarily in the States of Oregon and Washington.

Mr. HATCH. It would not only benefit them but alleviate the plants from the requisites required by this act over everybody else?

Mr. McCLURE. This act would require a permit application for those plants not underway at the present time. The question is whether it will have retroactive effect and where that retroactive effect is cut off. As I understand the amendment offered by the Senator from Washington, it is to make certain that the retroactive effects do not apply in that particular case.

Mr. HATCH. In other words, this particular bill we are voting upon today will

not apply to that particular situation which benefits Montana and Washington, among others?

Mr. McCLURE. So far as the permit required referred to in the legislation.

Mr. HATCH. And that is the permit to go ahead and develop coal and deliver it to Washington.

Mr. McCLURE. There are other requirements of the act. I did not want the Senator to understand that would exempt them from all provisions of the act. It would only make certain that they were not required to go back and get the permit which is required under the act for all new operations but not for those underway already.

Mr. HATCH. Of course, that is something that may or may not apply to other States which had not had this special technical amendment assistance. Is that correct?

Mr. McCLURE. If there are other operations in other States similarly affected, they would have the same benefit of the amendment. If they are not, they would not have the same benefit.

Mr. MUSKIE. Mr. President, I yield myself another minute.

This amendment does not decide whether or not the project is in motion. This or any other project in any other part of the country. It is not the intent of this bill to try to write law applicable retroactively to projects already underway. That is always the problem when one is in the process of writing new policy, the question of how far back it is made applicable, to what extent are people caught up under a new set of rules when they were already underway under a different set of rules. I suppose we could have made this retroactive to 1970 or 1960, but we did not and I doubt that the Congress would buy it.

We are going to have marginal situations from time to time where judgments will differ as to whether or not the project ought to be deemed as being underway. As to that, I am no expert as to the facts. The Senator from Idaho is an expert, and I think he has pretty well described how the project, which is a Montana project, relates to this bill.

Mr. HATCH. I am delighted to have that information in the RECORD. In the consideration of this technical amendment, what other projects did those who agreed to this amendment consider besides the one in Montana? Were there other projects given consideration?

Mr. MUSKIE. Did we screen the country to find out if there were others in like circumstances?

Mr. HATCH. Yes.

Mr. MUSKIE. No; will the Senator suggest by what means I can scan the country when an amendment is brought to me?

Mr. HATCH. I just wanted to——

Mr. MUSKIE. The Senator asked a question. Let me answer it. The Senator is asking whether or not I scanned the country to see whether or not, in my infinite vision and wisdom, there was some way I could identify other projects in like circumstances to which I could apply the amendment.

No, I had no means of doing so, may I say to the Senator.

I would also say to the Senator if he has a project in his State which he thinks should also be considered as being underway in the same sense, I would be glad to look at it. But to attribute to me the kind of countrywide vision which would enable me to identify other similar problems is not very realistic.

Mr. HATCH. All I want to attribute to the Senate is fairness in this. The Senator is a fair and, I believe, a very eminent and decent man, one of the people I respect a great deal. But all of a sudden we have one project out of all of them over this country which seems to be given special consideration.

The PRESIDING OFFICER. The time of the Senator has once again expired.

Mr. MUSKIE. Mr. President, I yield myself another 2 minutes. I remind the Senator that we can discuss this ad infinitum. We have two other amendments to consider and Senators are pressing me every time I turn around with, "When are we going to get through?"

The Senator casually says that we picked one project out of a great many projects across the country. By what kind of magic does the Senator finally determine that there are a great many other projects in these circumstances to which we should have addressed attention, may I ask?

Mr. HATCH. That is in the last 3 or 4 days. Senator McCLURE backs it up pretty well. Here is one project that has an exception and all kinds of benefits unless others, in the Senator's words, are in exactly the same circumstances.

Mr. MUSKIE. I say to the Senator if there are projects underway in this country——

Mr. HATCH. But I want to——

Mr. MUSKIE. Let me finish.

Under the definitions of this bill, which involve the words "commenced construction," the terms of the bill provide administrative opportunity to exclude them from the application of this bill.

Unfortunately, as the Senator will learn when he has been here long enough, there is no magic way to write legislative language that is so precise that it anticipates every potential inequity or every potential unusual situation. I do not have any way to do it. If I am going to desist from legislating or writing laws until I find such a way, then one great hoped-for objective will be achieved: We will stop writing laws. That may be a good thing.

Mr. HATCH. If the Senator will yield, I want to get to my amendment. I have agreed to cut down my time. I do not mean to hold up this great body.

Did the Senator give consideration to the six or seven projects which have been raised during this week during the consideration of this "technical amendment"? Did the Senator give any consideration to the six or seven projects in the Intermountain West?

Mr. MUSKIE. Which projects?

Mr. HATCH. Intermountain power project, the Pacific Gas & Electric, and others, which are in special circumstances, which need similar special consideration.

Mr. MUSKIE. Has the Senator brought technical amendments?

Mr. HATCH. Yes. We had technical amendments and were shut down.

Mr. MUSKIE. Has the Senator brought them to me?

Mr. HATCH. Yes.

Mr. MUSKIE. When?

Mr. HATCH. On the floor of the Senate.

Mr. MUSKIE. Which one?

Mr. HATCH. The Garn-Hatch amendment of yesterday.

Mr. MUSKIE. The intermountain power project, is that what the Senator is talking about?

Mr. HATCH. Yes.

Mr. MUSKIE. I commented on that and I put into the RECORD a letter by the Secretary of the Interior which commented on that. Both he and I agree in our judgment. I have not had the chance to examine that project—it has been under consideration by experts for months and years. It is in a remote part of the country. It was conceivable to me that the people who wanted to build it would reconsider their site location decision——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MUSKIE. I yield myself another 2 minutes.

And reconsider the technology they would try to develop and apply to cleaning up emissions. It is conceivable that such a project could be built on another location.

But the Senator, apparently, is so stubborn in his insistence that what he wants should be approved exactly as it is, that he admits of no permissible administrative flexibility and no permissible legislative flexibility.

This morning, in discussing the Scott amendment, I pointed out that under a study made, I think by Russell Train, and in a letter to Senator STAFFORD which I put in the RECORD, that it is conceivable, given the right terrain, the use of the right technology, that even a 5,000 megawatt powerplant could be built in the right areas of this country.

That does not mean it can be built in every area.

We did not in this bill create the mountains, we did not create the plains. But the fact is that the mountains impose restrictions from an air quality point of view upon economic activity that the plains do not.

That is a fact of life, whether we pass this bill or any other bill.

Then to ask me in some casual questions intended to suggest that I have somehow deliberately been unfair about one project, that I should have treated another project located somewhere else in another part of the country in exactly the same way——

Mr. HATCH. Will the Senator yield?

Mr. MUSKIE. The Senator raises the point and the challenge and I will finish what I have to say about it.

I reject that. That does not mean my

judgment is always infallible. It is not. But I am asked here to consider not only by Senator JACKSON, but by Senator HATCH, three amendments.

Mr. HATCH. That is right.

Mr. MUSKIE. The Senator brings them up to me and in 30 seconds asks me to react to them. Other Senators do the same and I do my best to make fair judgments.

I described what I did in the Jackson case. There may conceivably be other projects across this country that should be given similar consideration. If there are, I will consider them. But I am not going to try to make the kind of judgments the Senator seems to be asking me to make in the interests of promoting his view of the general policy of the bill. That is an entirely different question.

We have always tried, when we write these environmental bills, to write them in such a way as to not catch people in midpassage——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MUSKIE. Two more minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 additional minutes.

Mr. MUSKIE (continuing). From the beginning of a project until its end.

We try to do that. We do not always succeed. So, occasionally, we get these amendments that are offered for the purpose of insuring that that general policy objective is implemented in particular cases.

The Senator from Tennessee, the minority leader, had such a proposal today. We considered it a long time and we forced him to narrow his amendment until it clearly applied to only the one situation so that it would not be interpreted as being of general application.

I do not know how many amendments today we have been asked to consider.

Mr. HATCH. Will the Senator yield for a compliment?

Mr. MUSKIE. In a minute, then the Senator can belabor me as long as he wishes.

But I have been accepting amendments of that kind since 10:20 this morning and I have done my best to be fair, to be responsive, and to be accommodating within the limits of what I thought was fair and what I thought was right and what I thought was consistent with the bill.

Mr. HATCH. May I say to the Senator that I am not suggesting or imputing to him any impropriety. I would certainly not like to do that, except for one thing, the point I am making.

If it seems to me significant deterioration does not constrain development, then why did we need this significant technical amendment which now opens up development and significant deterioration for special interests out in one area?

That is the only question I have.

I am willing to withdraw any other comments. I will go right to my amendment to try to save time.

Mr. FORD. Mr. President, a point of information.

The PRESIDING OFFICER. The Senator will state it.

Mr. FORD. Mr. President, what is before the Senate?

The PRESIDING OFFICER. A general debate, yielding time on the bill itself.

The Senator from Utah is now prepared to offer his amendment.

Mr. FORD. I thank the Chair.

UP AMENDMENT NO. 398

Mr. HATCH. Mr. President, I call up my unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 398.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Page 104, strike out line 14 and all that follows down through line 22 and renumber the following sections accordingly.

Mr. HATCH. Mr. President, the issue of insuring that emission control systems on new cars meet federally mandated standards and that they continue to do so through the useful life of the car is extremely important to the national effort to reduce auto-related pollution.

To achieve this end, the committee bill contains a series of tests and maintenance procedures to be carried out throughout the life of the car. One of those tests, contained in section 34, would require testing of new vehicles at the dealership prior to their initial sale. Any vehicle which failed to meet emission standards could not be offered for sale.

The "presale" testing provision would result in franchised dealers—who have already paid the manufacturer for the vehicle—being precluded from selling cars which they are paying finance costs on. Dealers must finance their inventories in order to pay the manufacturers. For imports, payment is due upon delivery to the dealer; for domestic, payment is due within 15 days. Section 34 could require a dealer to hold some vehicles in inventory for much longer periods of time in order for any deficiencies or malfunctions in the emission system to be remedied. It is unclear whether the dealer would ever be allowed to perform these corrections since doing so might make him liable to antitampering prosecution. In some cases, the vehicle might have to be returned to the factory, thus causing inconvenience for consumers and creating additional costs to be borne by them.

The fact that section 34 is absolutely unnecessary is clearly seen when one looks at the entirety of the bill. Engines are already being tested at the production line. The committee bill strengthens the authority of EPA to establish further test procedures for a test to be conducted at the assembly plant. Between the time that this test is conducted and the preposed "presale" test would be conducted, the car would not even have been driven. To mandate a second stage of costly testing—an expense which, I might add, will ultimately be paid for by consumers—is an outrageous example of regulatory overkill.

The forced recertification of new vehicles prior to sale represents a fundamental shifting of responsibility from that which is mandated in the Clean Air Act. The sole responsibility for producing a vehicle which meets Federal standards has always been and must remain with the auto manufacturers. To shift this burden upon small businessmen who are prevented by law from correcting any deficiencies and who have in good faith already purchased the car from the manufacturers defies all sense of equity and fairness.

Mr. President, I strongly urge my colleagues to support this amendment which would strike the presale testing requirement of the bill.

I could say a lot more, but in the interests of time and the needs of my colleagues, I will let it go at that.

Mr. HART addressed the Chair.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Colorado.

Mr. HART. Mr. President, I intend to respond to the amendment offered by the distinguished Senator from Utah, but I want him to know, in the interests of expediting the bill, that I intend to offer a substitute amendment, which can only be offered upon the expiration of the time on his amendment. We will then have another half hour to debate that substitute. We may proceed as the Senator wishes.

Mr. HATCH. We can proceed with that right now.

I yield back the remainder of my time, but I should like an equal amount of time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HART. I yield back my time.

Mr. HATCH. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HART. Mr. President, a parliamentary inquiry. If we have the yeas and nays on an amendment and the substitute is offered and the substitute is adopted, what then will be the parliamentary situation?

The PRESIDING OFFICER. There will be a yea and nay vote on the amendment as amended.

UP AMENDMENT NO. 399

Mr. HART. Mr. President, I send to the desk a substitute amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HART), for himself and Mr. MUSKIE, proposes an unprinted amendment numbered 399 to the unprinted amendment of Mr. HATCH numbered 398.

Mr. HART. Mr. President, I ask unani-

mous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the amendment proposed to be stricken by Mr. Hatch, substitute the following:

"Page 104, strike out line 14 and all that follows down through line 22, and insert the following:

SEC. 34. Section 209(a) of the Clean Air Act is amended by adding the following: "Notwithstanding any provisions of this subsection, any State which has adopted a program for light duty motor vehicle emission inspection, testing, and maintenance as part of a State implementation plan approved or promulgated under section 110 of this Act may apply such program as a condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle. Any cost obligation of any dealer incurred as a result of any requirement imposed under the preceding sentence shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.".

Mr. HATCH. Mr. President, a parliamentary inquiry. Did I obtain the yeas and nays on my amendment?

The PRESIDING OFFICER. Yes.

Mr. HART. Mr. President, I ask for the yeas and nays on the substitute amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HART. Mr. President, for the benefit of Senators who are in the Chamber, I will explain where we stand.

The Senator from Utah has offered an amendment on an inspection and maintenance provision of the bill. We have yielded time on that amendment; and, for the committee, I have offered a substitute amendment on which we have a half hour, equally divided. I think we probably can reduce that time. We will then have a vote on the substitute amendment and, if necessary, a vote on the amendment itself.

The issue is this——

The PRESIDING OFFICER. Will the Senator withhold for a moment?

The amendment by the Senator from Utah is an amendment to strike. If the amendment of the Senator from Colorado is adopted, it will cause the amendment of the Senator from Utah to fall, and there would be no vote on it.

Mr. HART. That was the nature of my parliamentary inquiry earlier. That is what I thought the situation would be. I appreciate the clarification.

Mr. BAKER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Who yields time?

Mr. BAKER. I put a parliamentary inquiry to the Chair.

The PRESIDING OFFICER. On whose time?

Mr. HART. I yield 1 minute for the inquiry.

Mr. BAKER. Will the Chair repeat the ruling?

The PRESIDING OFFICER. When a motion to strike is pending and a substitute is offered for the language which is proposed to be stricken, if the substitute is agreed to, the motion to strike falls and is never voted upon.

Mr. BAKER. Mr. President, a further parliamentary inquiry: Does that occur if, in fact, it does not strike all the amendment, and does this substitute, in fact, propose to strike all the amendment?

Mr. HATCH. That was not my understanding.

The PRESIDING OFFICER. This proposal substitutes new language for all the language proposed to be stricken.

Mr. HATCH. What the Chair is saying is that if it is agreed to, there never will be a vote on my amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. That is not what I understood, and Senator HART said that is not what he understood. If that is so, then I ask that we be given back the time, I will finish mine, and we will have a vote on mine, and then the Senator can present his.

Mr. HART. When time is used on the amendment, it will be in order to offer a substitute and I can offer the substitute. We will have time to debate the issue. The question is, If my substitute prevails, is it necessary to have a vote on the amendment? That is the question. We could have back-to-back votes, and it would come out the same way.

Mr. HUMPHREY. Mr. President, I think it is quite obvious that if a substitute is offered, that is the answer. If it is agreed to, no further vote is needed.

Mr. HATCH. All right, let us go ahead that way.

Mr. HART. Mr. President, section 9(a) of the original Clean Air Act contains language which was interpreted by the courts as prohibiting States from requiring any kind of certification inspection or other sort of approval related to emission levels from a new motor vehicle as a precondition to the initial retail sale, titling, or registration of a vehicle.

What the committee attempted to do in section 34 of the bill was to authorize States to enact inspection and maintenance programs which could include inspection of new vehicles as a condition of titling or registering or selling those vehicles in that State. The Senator from Utah said that this requires a presale or sale emission certification. The bill does not do that. The bill authorizes a State to require an inspection and maintenance program—that is a very important distinction.

The problem here is this: The testing of new cars is done at the factory on a random basis—the testing for meeting statutory emission requirements. That is a random sample. It obviously touches only a very small portion of all the cars produced. From the time that automobile leaves the factory, even a tested vehicle that arrives at the dealer's showroom, in transmission, in the conveyance, quite often has the emission control equipment disturbed or in some way damaged. In addition, the vast majority of the cars produced may arrive, and often do arrive, at the dealer's showroom not in compliance with the Federal law.

There are States, including the State of New Jersey, and communities, such as Portland, Oreg., which have implemented inspection and maintenance programs to reduce emissions. What this provision of the committee bill would do would be to authorize those States to implement those programs at the car sale level.

In the last week or two, the legislature of the State of Colorado has enacted a measure which would implement a strong inspection and maintenance program. But because of the provision in the original act, which we amended this year, they would be prohibited from imposing that on new car sales; so the Colorado legislation applies only to cars 2 years old or older.

What the committee intends to do—and I think it was almost uniformly adopted in the committee—is to authorize any State which wished to do so to establish an inspection and maintenance program which included, as a condition of sale, initial retail sales, titling, or registration of a motor vehicle, an inspection and maintenance system to see whether or not that vehicle conformed with the Federal law.

I think the Senator from Utah has identified what he considers at least to be a potential problem. The substitute amendment addresses itself to that by first reintroducing into the law the committee language permitting States to adopt these programs and then adding the additional sentence, just to make it very clear that automobile dealers are not to be penalized if a car does not conform.

I will read the language which is in the substitute amendment, on which we will be voting first, which clarifies the intent of Congress in the committee amendment:

Any obligation of any dealer incurred as a result of any requirement imposed shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

For example, if the State of Colorado adopted an inspection and maintenance program which applied to new car sales, and if the State of Colorado tested a new car for its conformity with Federal standards and found that car to be deficient, the cost of making that car conform to the law would be borne by the manufacturer and not the dealer. That was the clear intent of the committee. The language, which the substitute amendment contains, clarifies that and adds that sentence to the original committee language.

So, Mr. President, this is to authorize States to carry out these programs if they wish. It is our indication that a number of States wish to do so. It is to solve a problem created by the random sampling of new cars at the factory, and the fact that many cars are produced not covered by that random sample which do not conform with the law.

I reserve the remainder of my time.

Mr. HATCH. I think this amendment does not do what needs to be done here. The fact of the matter is we have manufacturers who are responsible for meeting the emission standards on automobiles. I want to put that responsibility where it really should be, and that is with the manufacturers and with the EPA.

The Senator's amendment does not solve that problem. It just creates a lot more, and I realize it is a good faith attempt to try to meet the questions which I have raised here. But I am worried sick about the dealers in this country who are going to have all kinds of difficulties if the old language is passed or if the Senator's amendment language passes.

Let me just say this: Most of them are small, independent dealers who really cannot afford the costs of delay, the costs of inventory, the costs of interest, the costs of floor planning, the costs of negotiating with the manufacturers in those States, if the Hart amendment passes.

In the States which authorize this program of presale testing, the following costs would arise: Various costs would come to the dealers that they do not deserve, and they really should not have to have, and we are going to lose what the real intent of this bill is, which is to ultimately put this burden on the part of the manufacturer and the EPA to see that the emission standards are met.

Now what are some of the costs that the dealers are going to have, even with the Senator's substitute amendment? They are going to have to pay interest to the bank on the floor planning of the cars which they will not be able to sell because the State comes in and says they do not meet the standards.

They are going to lose the cost of the lost sales that occur during the time they have to hold onto the cars or negotiate or fight or sue or whatever else they have to do with the manufacturer to get them to bring the cars back up to standard.

A good percentage of the cars are presold when they arrive at the dealership, so if they cannot be sold, the dealer will lose these sales during that interim time.

He is going to have the cost of the boys who are employed while they are not having any sales, the storage cost of cars while they are brought back into compliance. They are going to have the costs of bringing the cars back into compliance themselves even though allegedly the Senator's substitute would——

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. HATCH. May I finish, then I would be delighted to yield to the Senator.

Mr. MUSKIE. I thought the Senator would like to be accurate.

Mr. HATCH. If the Senator wants to be, I will be happy to yield any time.

Mr. MUSKIE. There is nothing in the committee amendment that puts any burden on the dealer. And the amendment clarifies it, if there is any doubt about it, by putting the burden of the cost directly on the manufacturer.

What the committee bill does, and what this amendment even more sharply does, is to protect the consumer.

Mr. HATCH. Can I have this charged against the Senator's time?

Let me just add this: Frankly, the real question is the question of "costs," and the costs of litigation because this bill does not alleviate that problem. In fact, the matter of costs will have to be defined through litigation, which is very expensive.

The end result is we have the possibility of 28,000 franchisees, for example, using the manufacturers over what are the costs, which are now covered by the Muskie approach and the approach in this substitute amendment.

Mr. McCLURE. Mr. President, will the Senator yield for a moment?

Mr. HATCH. Yes, I would be glad to yield to the distinguished Senator from Idaho.

Mr. McCLURE. I wish to commend the Senator from Utah for bringing this matter up. The matter was debated at great length in a somewhat slightly different context in the committee hearings this year and last year, and I support the effort, the Senator's effort, to strike this provision from the bill.

The question is what kind of a test will be required to determine whether or not the production line turns out cars that meet the emission tests.

The committee in this bill has strengthened the hand of EPA to require whatever kind of production line test is necessary to make certain that their production line meets reasonable standards of qualification in meeting the emission test, and I do not think we ought to then—let me back up just one moment and say that one of the things we debated was whether they could do it on a sampling technique or whether they had to test every automobile that came off the production line. We specifically rejected that latter condition. We gave EPA the authority to require, if they could work it out, and if it is necessary, but we specificially reserved the opportunity to EPA to use less than an every-automobile test on the production line.

It seems to me when we then take that away from Detroit and saddle it on the dealers that we have moved in the wrong direction if that every-car test is necessary and desirable, and it ought to be at the production line in Detroit and not out on all the little dealerships across the land. If it is desirable, we ought to amend it. We ought to require an every-automobile test on the production line, a matter which the committee specifically rejected.

Mr. HART. Mr. President, will the Senator yield?

Mr. HATCH. I just want to add to what Senator McCLURE says, if I may, and that is, that the real burden should be on the manufacturer and on EPA.

The Senator's substitute to my amendment does not alleviate that problem. What it does is muddy the waters. It puts the dealers in all kinds of problems and expenses.

Mr. HART. Mr. President, will the Senator yield?

Mr. HATCH. If I could just finish this thought—all kinds of expenses and all kinds of difficulties, and it really does not do what the Senator's amendment wants to do, and that is, to place the costs in reality where it should be. That is why the Senator's substitute really is not, frankly, any better than the original section 34, which should be stricken.

So I have to respectfully request that my colleagues here vote against the Senator's substitute and for my amendment.

Now, without yielding any more of my time I would be happy to yield.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. HATCH. I would be happy to yield for a question.

Mr. GOLDWATER. I would like to ask the Senator from Colorado to answer this question, and maybe it will help. In my State of Arizona we have mandatory emission testing. Let us say I go downtown and buy a car. Before I can get my license it has to be, the emission has to be, tested at a certain spot. If the emission does not meet the standards I cannot get a license. Who is stuck?

Mr. HART. Well, first, let me clarify the Senator's question. Is he saying that is the law in Arizona now or is he hypothesizing?

Mr. GOLDWATER. No, no, that is the law. In fact, I have a new car and I cannot get it out there to get the emission tested, so I cannot get a license.

Mr. MUSKIE. Mr. President, will the Senator answer a question? Is the Senator asking the question where there is testing before he gets the car?

Mr. GOLDWATER. No, after I buy the car.

Mr. MUSKIE. That is a different proposition than in this bill. That is the sort of ambiguity this bill is intended to eliminate. In other words, this bill is intended to require the testing before the car is sold, so the consumer is not stuck or left in doubt as to who is stuck.

Mr. GOLDWATER. That would require a change in my State laws.

Mr. MUSKIE. I do not know that it could change the State's laws. The provision is permissive, may I say to the Senator. The State does not have to do it.

Mr. GOLDWATER. We tried to get rid of it.

Mr. MUSKIE. I would agree with the Senator, I think this presale testing, which then gives the dealer a chance to put the burden back on the manufacturer, is the better way to deal with it.

Mr. HART. May I also say to the Senator from Arizona we have been contacted by States, including the State of Colorado, which have interpreted judicial rulings on the legislation enacted in 1970 as prohibiting those States from doing what the Senator says is the law in Arizona now, that is to say, from enacting those kinds of programs. So we have been approached by States that want the authority which this amendment would give them.

This does not require one State to enact this law. It does not require one car to be inspected before it is sold. It does authorize any State to adopt that kind of program.

Mr. GOLDWATER. My question is directed to who gets stuck, the dealer or me?

Mr. HART. Let me explain that, in response to the statements made by the Senator from Idaho because that is in the history of the clean air legislation, the Senator from Idaho says, and I think the sponsor of the original amendment agrees, that if we are going to solve the problem of turning out clean cars it ought to be done at the assembly line. On the other hand, the Senator from Idaho says he would not support that. So we are in a Hobson's choice. We believe in States' rights. Let us authorize the States to do it if they want to. They do not have to. But States want to. They want the authority to do that.

Let me respond to other statements made by the Senator from Utah.

Mr. HATCH. That is on the Senator's time. I understand I can get time against the bill. All right.

Mr. HART. I understand.

The Senator from Utah said certain costs will be covered. I will read the additional line in the substitution.

Any cost obligation of any dealer incurred as a result of any requirement imposed shall be borne by the manufacturer.

Mr. HATCH. Mr. President, will the Senator yield for a question?

Mr. HART. The transfer of any such cost obligation, and so forth, is prohibitive. I do not know how we can make it clearer.

Mr. HATCH. Will the Senator yield?

Mr. HART. I yield for a question.

Mr. HATCH. Yes, it would include, would it not, all of these items of cost which could amount to thousands of dollars to dealers that would have to be adjudicated in the courts over long periods of time and sometimes as long as 5 years and maybe even longer. It could ruin and bankrupt dealers all over the country.

Mr. HART. What is to be adjudicated? The language could not be clearer.

Mr. HATCH. It is difficult to define "costs" in your substitution, nor would the word ever be defined except by the courts. The fact of the matter is, and my question goes to this—that is the big question—the thing that brings about litigation is the question about what costs are reimbursable. Are all these costs that I raise reimbursable? There is no definition of cost in the Hart amendment and one cannot take the time to do it.

Mr. HART. When one goes to law school, the first thing they tell you when you walk in the door is you cannot prevent anyone from suing someone else. That is the first thing one learns.

Mr. HATCH. The first thing trial lawyers know is it takes an awful lot of time to try cases. The word "cost" is an indefinable term here in your amendment, to be defined by a jury and judges, which amounts to an immense amount of money.

Mr. HART. I did not yield the floor.

The second thing to learn is that the way to settle harassing lawsuits is to make the law clear. The law cannot be made more clear than it is in this substitute. And if thousands of automobile dealers want to sue the manufacturers or vice versa, which I suspect would be the case if there were any lawsuits at all, and I doubt that, they would be wasting their time. The law is extremely clear.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. HART. I yield to the Senator from Maine.

Mr. MUSKIE. The whole question is where you put the burden of costs. I do not know whether in a particular car they are going to involve tens of dollars or hundreds of dollars or thousands of dollars or tens of thousands of dollars. I do not know what kind of cars the Senator from Utah buys.

But in any case, what we are trying to do in the committee is to avoid imposing the burden of the costs, and the inconveniences associated with driving a car that the manufacturer failed to put in shape in accordance with the requirements of the Clean Air Act, on the manufacturer. That is the whole purpose.

When you permit these cars, many of which do not meet the clean air standards when they arrive at the dealer's showroom, to be sold, which the laws of probability say may not meet the clean air standards, then those cars are in the hands of the consumers who have the burden, the responsibility, and the costs.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. If I could make one additional statement, precisely what I am trying to do is to protect the two people in any sale of any car who do not deserve the burden of the any costs at all, by not making them subject to guaranteeing EPA standards. One is the dealer and the other is the consumer. And if this particular amendment to my amendment goes through, it is going to impose the ultimate cost on the consumer, and that is what people do not seem to understand in this society.

Mr. McCLURE. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. McCLURE. I shall comment only on one statement the Senator from Colorado made, and that is that the Senator from Idaho said if you want to do this kind of every-car testing it should be done by the manufacturer. That is precisely what I said. And it is also correct to say that the committee considered that alternative and explicitly refused to mandate that kind of every-car test. They permit it to be done, if EPA and the auto manufacturers jointly together and the EPA in consultation with the manufacturers find in an every-car test the way to solve the production line problems that EPA has that authority under the legislation which we have proposed. That is another provision in this bill. But we explicitly refused to go to the every-car test route and now we find ourselves in the Chamber trying to go back in the back door to do what the committee expressly rejected.

Mr. HATCH. If I could just close with this: The greatest assets of this provision are the indirect costs: The disruption in planning and inventory, the lost sales, the litigation to define what costs are to begin with, which the Senator from Colorado feels are very clear in this bill and I do not feel they are, the disruption and strains betwen dealers and manufacturers, all of these are real costs but they are indirect costs and not traditional costs and they are going to be passed on to the consumer.

What I wish to do is strike the provision. If we are successful in doing that, then it is very clear upon whom the costs of meeting those standards is imposed. That is upon the manufacturer, which the bill really wants to impose it upon anyway.

With that I yield.

Mr. DOMENICI. Does the Senator yield?

Mr. STAFFORD. Yes.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. HATCH. I yield to the distinguished Senator from Tennessee.

Mr. BAKER. Mr. President, I thank the Senator for yielding.

I simply want to say this is an issue that has been before the committee for a long time. We debated it at great length over a period of years. We can go either way without any great distress to the cause of environmental quality. I personally happen to think that the assurance of compliance should be with the manufacturer.

Mr. HATCH. I do, too.

Mr. BAKER. Not with the dealer. I simply want to say that it is therefore, on that basis that I have decided I will oppose the substitute of the distinguished Senator from Colorado, and if I have an opportunity I will support the amendment offered by the distinguished Senator from Utah.

Mr. HATCH. I yield time to the distinguished Senator from New Mexico.

Mr. DOMENICI. How much time does the Senator have remaining?

The PRESIDING OFFICER. Two minutes remaining.

Mr. HATCH. Will the Senator take a minute? Then I yield a minute to the Senator from Michigan.

Mr. DOMENICI. I will take a minute.

I am not going to support the Hart amendment, hoping I have a chance to support Senator HATCH's amendment. My reasoning is basically this: In the basic national law the EPA Director could at the manufacturer's level set different ways of testing these cars. If they are arriving in an inadequate manner we should have the EPA Director nationally change his way of monitoring and measuring the pollution emission potential. We should not set out a pattern of having 10, 12, or 15 States only because they would like to put in their State laws, in a position where each dealer around the country will be charged with

this and then resolve it by saying if we do that we will make the manufacturer pay those costs. I think that makes a worse situation than to proceed to force the EPA to set a better national approach.

The PRESIDING OFFICER. The time has expired.

Mr. HATCH. I yield my remaining time on the amendment to Senator RIEGLE.

Mr. RIEGLE. I appreciate the Senator yielding, and I support the amendment he offers and oppose the Hart substitute.

Bear in mind if we do not do this testing at the manufacturing level where we can set up sophisticated machinery where it needs to be done—that is the logical place to do it—and are going to try to do it in the dealerships we are going to have to do it in thousands of locations across this country. And to perform that kind of testing requires the people and the machinery to do that when that same job can be done in a handful of manufacturing locations. To talk about doing it in locations all across the 50 States is just ridiculous, and it is going to cost a lot of money and not going to give us any gain or benefit.

Why they would ever do that is beyond me. I thank the Senator for yielding and hope that we can defeat the Hart amendment and pass the Hatch amendment.

Mr. GRIFFIN. Mr. President, will the Senator yield to me?

Mr. RIEGLE. I yield to my colleague.

Mr. GRIFFIN. Mr. President, I associate myself with the remarks of my colleague. This required additional cost to every dealer. Is there any way that that cost could be prevented from eventually finding its way either to the taxpayer or to the consumer?

Mr. RIEGLE. Of course not.

The PRESIDING OFFICER. All time has expired.

Several Senators addressed the Chair.

Mr. STAFFORD. Mr. President, I support the amendment offered by Mr. HART. The amendment proposed by the Senator from Utah would remove authority of States to require presale tests of automobiles. The amendment would reduce the flexibility of States to protect their citizens from defective auto emissions devices.

I want to emphasize that the provision in the committee bill does not require a presale test. Rather, it permits a State which decides that such a test will improve performance of emissions controls, to employ such a test.

It is argued that a presale test as a precondition to sale of an automobile will hurt auto dealers. It is said that a dealer who has purchased cars from the manufacturer will be "stuck" with those that fail the presale test. This would be an unfortunate occurrence.

But the substitute proposed by Mr. HART takes care of this possibility. Before a State adopts a presale program, I would expect it to look at commercial arrangements. I would expect a State to listen to its dealers before enacting a law which would be unduly onerous.

I do think a presale test is a strategy which belongs in the arsenal of a State which finds it is needed to reduce auto-related emissions and therefore support the substitute offered by the Senator from Colorado.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado (Mr. HART) to the amendment of the Senator from Utah (Mr. HATCH). The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, when I chatted with the distinguished majority leader——

Mr. HART. Point of order, Mr. President.

Mr. HATCH. He said if I did not have enough time, he would give me time against the bill. All I need is 1 minute for Senator GRIFFIN.

Mr. HART. Then I will need another minute.

Mr. HATCH. All right, take 10, if you want it, but I want the equivalent time. I just want 2 more minutes; would that be sufficient?

Mr. STAFFORD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Chair has ruled that all time has expired, and a rollcall is in progress. Does the Senator state that he was seeking recognition before the rollcall began?

Mr. STAFFORD. No, we will not do that.

Mr. HATCH. I will relinquish my time. Let us vote.

The PRESIDING OFFICER. A rollcall is in progress.

The call of the roll was resumed and concluded.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from North Carolina (Mr. MORGAN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Arkansas (Mr. BUMPERS), the Senator from Vermont (Mr. LEAHY), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Minnesota (Mr. ANDERSON), and the Senator from North Carolina (Mr. MORGAN), would each vote "yea."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Illinois (Mr. PERCY), the Senator from Texas (Mr. TOWER), the Senator from Wyoming (Mr. WALLOP), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER), would vote "nay."

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Texas (Mr. TOWER).

If present and voting, the Senator from Oregon would vote "yea" and the Senator from Texas would vote "nay."

The result was announced—yeas 43, nays 39, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—43

Abourezk	Hart	Metzenbaum
Bayh	Haskell	Moynihan
Biden	Hathaway	Muskie
Brooke	Heinz	Nelson
Burdick	Huddleston	Nunn
Cannon	Humphrey	Packwood
Case	Inouye	Pell
Chiles	Jackson	Proxmire
Clark	Javits	Sarbanes
Cranston	Kennedy	Stafford
Culver	Magnuson	Stevenson
Durkin	Mathias	Stone
Eagleton	Matsunaga	Williams
Ford	McIntyre	
Gravel	Melcher	

NAYS—39

Allen	Eastland	Riegle
Baker	Garn	Roth
Bartlett	Glenn	Sasser
Bellmon	Griffin	Schmitt
Bentsen	Hatch	Schweiker
Byrd, Harry F., Jr.	Hayakawa	Scott
	Helms	Sparkman
Byrd, Robert C.	Hollings	Stennis
Church	Laxalt	Stevens
Curtis	Lugar	Thurmond
Danforth	McClure	Young
DeConcini	Metcalf	Zorinsky
Dole	Pearson	
Domenici	Randolph	

NOT VOTING—18

Anderson	Johnston	Percy
Bumpers	Leahy	Ribicoff
Chafee	Long	Talmadge
Goldwater	McClellan	Tower
Hansen	McGovern	Wallop
Hatfield	Morgan	Weicker

So Mr. HART's amendment was agreed to.

The PRESIDING OFFICER. When a motion to strike and insert has been agreed to for the language proposed to be stricken, a previous motion to strike falls and is not voted on. Therefore, the Hatch amendment will not be voted on. The bill is open to further amendment.

Mr. MUSKIE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

The Senator from New York.

Mr. JAVITS. Mr. President, I claim the time allotted to me under an order previously entered.

Mr. HUMPHREY. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. JAVITS. Mr. President, I address this question to the manager of the bill and to the ranking minority member.

I would like to discuss a question relating to the interrelationship between section 113(g)(1), the so-called nonattainment provision and section 110 (a)(3)(A)(iii), which deals with the requirements of State implementation plans for those States which have air

quality control regions which will not meet primary air quality standards. It is my understanding that the proposed section 110(a)(3)(A) of the Clean Air Act amendments now under discussion requires that a State, in its revised implementation plan prepared in accordance with this act, identify air quality control regions in which a national primary ambient air quality standard will not be attained or maintained by July 1, 1979, and that the implementation plan include strategies for reducing emissions from existing and/or new sources in the region and achieving primary standards within 3 years of 1979. This section does not seem to require an offset for nonattainment of secondary standards.

I am concerned about an apparent inconsistency between this section and section 113(g)(1), the so-called nonattainment provision.

My concern is that the language of section 113 may be interpreted as extending the coverage of the nonattainment provision for period 1979 beyond the public health-related primary standards to the public welfare-related, secondary standards. If this interpretation were to be correct, I am concerned about the devastating impact it would have on the development of new and expansion of existing industries in those portions of our States in which secondary standards are now exceeded. I am specifically concerned about the possible impediments to construction of new, coal-fired powerplants in such regions and conversion of existing plants, which construction and conversion is critical to our national energy policy.

It is common knowledge that whereas many air quality control regions in the United States have achieved or are well on the way toward achieving the primary standards, great difficulties are being encountered by many States, including New York, in achieving secondary standards. For example, in New York State many portions of air quality control regions currently exceed secondary standards. This is true for the State's major urban centers such as the New York metropolitan region, the Buffalo-Niagara area and the Hudson Valley-Albany area.

Is it a correct interpretation of section 113(g)(1)(i) that no offset will be required of new or modified major emitting facilities constructed or modified after July 1, 1979, if the State has obtained approval of a revised implementation plan for pollutants which meet the primary standards but exceed secondary standards so long as the facility can comply with the approved revised State implementation plan?

Mr. MUSKIE. The Senator is correct for reasons that I am glad to place in the RECORD.

The senior Senator from New York raises important questions regarding the implementation of nonattainment tradeoff policy and its relationship to primary and secondary standards. To understand this issue, it is important to understand how secondary standards are treated in the Clean Air Act. The Clean Air Act requires that State implementation plans must be attained no later than 3 years from the date of approval of such plan. With regard to secondary standards, the requirements contained in section 110(a)(2) requires that attainment of the secondary standard must be achieved within a "reasonable time." Most States placed the attainment date for both primary and secondary standards together at the same date. Those dates have now passed.

The policy contained in the 1977 amendments requires that in areas where standards have not been attained, specific source-by-source, case-by-case tradeoffs linked together between existing and new sources must be developed and must require greater reduction in pollution from existing sources than would be created by the new source. This is true when the primary standard is exceeded at present in the area, or when the area is behind its schedule for attaining the secondary standard.

It is my view that with regard to the primary standard, Congress specifically mandates a recision of State plans where primary standards have still not been attained. This in no way removes the authority of the Administrator to require submission of revised plans regarding secondary standards; but the committee felt that the public health standard contained in the primary standard was of such importance that Congress should mandate a specific revision in plans that are now inadequate.

The State has the opportunity of establishing a new deadline for attaining any secondary standards when the State chooses to revise its plan dealing with secondary standards or when the Administrator requires such a revision.

In this discussion it is important to set aside some of the concerns that have been raised. The present tradeoff policy of EPA is relatively site specific with regard to sulfur oxides and particulate matter. For the control of oxidant, the strategy changes to a regional reduction in pollution because of the regional nature of that pollutant. But with regard to sulfur oxides and particulate matter, the fact that an air quality control region or a portion thereof is a nonattainment area does not preclude growth within that area. It may be that the cause of the area exceeding the standard is due to a localized factor a few miles away from the proposed new source. If there is no connection between the air quality and the activities at the two sites, and the new source would not contribute to the nonattainment problems occurring close to the cause of those problems, then, after a case-by-case analysis assuring that this is in fact true, the new source can be allowed to build without having to establish emission offsets from existing sources in a tradeoff fashion. This is not true for the control of hydrocarbon emissions that lead to oxidant—smog. In that case, the new source must find tradeoffs from other existing sources, because of the fact that this pollutant is transported for long distances and does affect pollution over a wide area.

However, once a revised State implementation has been approved that meets the requirements of section 110(a)(3)(A)(iii), a specific case-by-case tradeoff will only be required by these amendments for pollutants that do not meet primary ambient air quality standards unless the State plan specifically imposes, at its own choosing, a deadline which requires such tradeoff to attain the secondary standards.

Mr. JAVITS. The main point is that in nonattainment areas in building new facilities, whether it is a power station or what, because the bill, itself, is a little uncertain, using the word applicable on the subject, the question is what standards are to be met? Of course, the answer is the primary standards and secondary only insofar as the implementation is concerned and for whatever date it fixes related to facilities constructed after July 1979.

Mr. MUSKIE. The Senator is correct.

The PRESIDING OFFICER. The Senate will be in order, please.

Mr. JAVITS. Does the ranking minority member concur in the interpretation of the meaning of this bill?

Mr. STAFFORD. The Senator from Vermont is happy to inform the Senator from New York he concurs in that interpretation.

Mr. JAVITS. I thank my colleague.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The bill is open to further amendment.

SEVERAL SENATORS. Third reading!

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I wonder if the distinguished manager of the bill and the ranking minority member would put in a brief quorum call just for a moment while I check.

Mr. MUSKIE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 400

Mr. DOMENICI. Mr. President, I send to the desk an unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI) proposes an unprinted amendment numbered 400.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 130 after line 22 add new Section 49 and renumber all following Sections:

"Sec. 49. Notwithstanding the provisions of Section 122 of the Clean Air Act as amended (Measures to Prevent Economic Disruption or Unemployment), the President in considering an Order or Rule to require the use of locally or regionally available coal or coal derivatives to prevent economic dislocation or unemployment shall take into account the final cost to the consumer of such an Order or Rule.

Mr. DOMENICI. Mr. President, this is an amendment which will modify the Metzenbaum amendment which we accepted today by a very close vote. It will do so by adding a notwithstanding clause. Basically, what it says is that in the specific situation contemplated by that amendment, that before any order is issued the person permitted to issue that order shall take into account the final cost to the consumer of such an order or rule.

A simple addition to it. It merely is saying that as we evaluate for implementation under that Presidential mandated conversion, we shall also take into account the cost to the consumer.

I have checked this with Senator METZENBAUM and Senator RANDOLPH. It is my understanding it is acceptable to them and I assume it is acceptable to the managers of the bill.

Mr. RANDOLPH. Will the Senator yield to me?

Mr. DOMENICI. I am happy to yield to the Senator.

Mr. RANDOLPH. Senator METZENBAUM and I are very appreciative of the concern the Senator expressed during the debate on the original amendment and in this effort.

(Mr. GOLDWATER), would vote "nay." did with the affirmative vote on our amendment. But it is to help us, as the Senator sees it, to strengthen that amendment.

I am in agreement. We are doing that by agreeing with what the Senator has suggested.

Mr. DOMENICI. I thank the Senator.

Mr. METZENBAUM. I hope the Senator from New Mexico continues his concerns that are evidenced in this. I am pleased to accept the amendment.

Mr. DOMENICI. I thought the Senator had such a concern when he introduced it. I just wanted it in the amendment.

Mr. President, I yield back the remainder of my time.

Mr. METZENBAUM. I thank the distinguished Senator from New Mexico.

The PRESIDING OFFICER. Does the Senator from Maine yield back his time?

Mr. MUSKIE. Mr. President, I support the amendment and will take it, on my part, although other Senators are the principal sponsors.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment was agreed to.

Mr. McCLURE. Mr. President, would the Senator yield for a unanimous-consent request?

Mr. MUSKIE. Yes.

Mr. McCLURE. I ask unanimous consent that a letter addressed to the Honorable MALCOLM WALLOP be printed in the RECORD at this point at his request.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., May 23, 1977.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WALLOP: This is in response to your request of May 3 for our opinion on the effect of certain language contained in the significant deterioration provisions of S. 252 (Clean Air Act Amendments of 1977). You have asked whether the definition of "baseline air quality concentration" (which would become new section 302(1)), would require that all emissions from a new source be counted against the air quality increments even if the new source were a replacement for an old source. Based upon the language of S. 252 and the current status of the legislative history, we feel that your question can clearly be answered in the negative. The new emissions would be counted only to the extent they exceeded the emissions from the facility being replaced.

While the section 302(1) language cited in your letter states that new source emissions shall be "accounted against" the increments, the language does not preclude a credit for reductions achieved from closing down existing sources. In view of the language of proposed section 110(g)(2), which makes clear "cumulative" changes in air quality are to be assessed against the increments, we would not read proposed section 302(1) to have the effect which you feared.

Our construction of the proposed statutory language is bolstered by the Committee Report (95-127, May 10, 1977) at pp. 97-98. After noting that new sources' emissions must be deducted from the applicable increments, the Report provides: "This of course does not include facilities built as replacements for [existing] sources. Only the emissions from such replacement facilities in excess of those from the source replaced would be deducted from the applicable increment."

Please do not hestitate to contact me if I can be of further assistance.

Sincerely yours,

G. WILLIAM FRICK,
General Counsel.

ADDITIONAL STATEMENTS SUBMITTED

Mr. BAYH. Mr. President, I rise today in support of the Clean Air Act Amendments of 1977, S. 252. The Clean Air Act, first passed in 1970, was a truly landmark piece of legislation, with one clear goal: protecting the public health from increasingly dangerous levels of pollutants in the air.

The legislation mandated that air quality in our States and local areas reach nationally established standards consistent with public health needs. Once the Environmental Protection Agency established these standards, States were to develop plans for attaining them. The major strategies for pollution control were a 90 percent reduction in auto emissions and compliance by industrial sources of pollution with strict emission limitations achieved by the adoption of continuous methods of pollution control. In addition, if necessary to achieve national standards, States were to include transportation and land use programs to influence the siting of large facilities and traffic patterns which have a significant impact on air quality, especially in major metropolitan areas.

These requirements were far-reaching in their impact, comprehensive in scope and revolutionary in character. Yet they were justified by the growing recognition that without effective action to curb the ever growing sources of pollution present in our modern, industrial society all Americans would be subject to unnecessary but inescapable health risks.

Over the last few days, the Senate has been back at the drawing boards, assessing our progress and making mid-course adjustments, taking into account recent developments in technology, our economy, and the energy problems which have become so apparent in the 1970's.

The debate in the Senate on S. 252 has indicated that several potentially competing values are touched by the Clean Air Act. Still in a recession, some have expressed reservations about doing anything which might thwart continued economic growth. Warned just recently by President Carter of the impending crisis we will face on the energy front if we take no action, some have warned that protection of our air will place obstacles in the way of energy conservation and self-sufficiency.

Mr. President, I do not take these reservations lightly. Along with the rest of my colleagues, I want to see this Nation resume its historic pattern of economic growth and begin the long path toward solving our energy problems. But the state of the public's health must also be a paramount concern of ours. I have spent much of my time since coming to the Senate making sure that our Government is doing all it can to support health research and bring the benefits of modern medicine to all our citizens. This is a third and equally important consideration we must bring to bear on our decision making about the Clean Air Act amendments.

In assessing the progress made since 1970, there is no question that the efforts made in the intervening years have had a substantial impact on air quality. We have witnessed significant decreases in major pollutants emitted from industrial sources. New cars are 67 percent cleaner than those sold in 1970.

Yet it is also true that the goals set out in 1970 have not been met. Three-quarters of the Nation's air quality control regions are still out of compliance with national standards for particulates—a major industrial pollutant—with smaller numbers still not meeting standards for sulfur dioxide, oxidants, and oxides of nitrogen. Disturbingly, some large cities have shown increases in pollution and, on an industry-by-industry basis, significant numbers of facilities, such as coalfired powerplants, steel complexes, refineries, and smelters and boilers, are still violating the law.

There will be costs associated with getting these sources of pollution into compliance, but the costs of inaction are also high—increased illness and deaths, damage to crops and other property, and continued erosion of the quality of life in both urban and rural areas. I urge my

colleagues to recognize these costs as equally as important as the economic claims raised by opponents of any Federal regulations to protect public health, and to support the balanced legislation on which we will vote today.

The Senate has debated at length the three major controversies raised by the Clean Air Act amendments: final auto emission standards, treatment of areas that have yet to attain air quality standards and the degree of protection to establish for those areas of the country whose air is cleaner than required by current Federal regulations.

The Senate has dealt with all three concerns in a balanced and reasonable manner, which will assure both public health and economic growth in the decades ahead of us.

First, for areas that have not yet attained the pollution reduction that was to be achieved by this summer, the Senate has granted generous delays and left decisions about industrial expansion and individual facility siting to State and local governments. Given the flexibility built into S. 252, States should be able to come into compliance with Federal standards over the next decade without experiencing economic hardships. S. 252 will require that all new industrial sources of pollution use the most advanced technology available, so that increased growth and jobs do not automatically mean more heart disease, cancer and respiratory illness.

Second, I am gratified that the Senate has retained the provisions of S. 252 that protect the clean air areas of our country. Mr. President, as we stand here and agonize about how to make our currently polluted areas livable once again, it would be foolhardy to allow presently healthy environments to sink to the same pollution levels routinely found in our major metropolitan and industrial areas. Once air quality has deteriorated, it takes years to reduce pollution levels to officially acceptable levels, much less to restore it to a natural and enjoyable quality. It would be short-sighted, indeed, not to protect the clean air we still have.

Finally, Mr. President, I would like to address myself to the portion of S. 252 that has received by far the most attention—the section on auto pollution. Frankly, this is the issue which has caused me the most concern, because it has become a major symbol for the many different values potentially affected by this legislation—economic growth, jobs, energy savings, and the public health.

In passing the Baker amendment, the Senate has given the auto industry until 1980 to come into final compliance with auto emission standards. I voted against the Baker amendment, because I wanted to get this issue resolved once and for all. I believe we would have achieved that, Mr. President, by adopting the Riegle-Griffin amendment.

The Riegle-Griffin amendment incorporated the same final auto emission standards as did Senator BAKER's, but gave the auto industry until 1982 to come into compliance. Many of my colleagues in the Senate did not think the industry deserved yet another extension, because of their poor past track record in meeting earlier deadlines. I must say I shared their reservations. However, in the end, I decided to support the Riegle-Griffin compromise because for the first time all of our domestic auto manufacturers agreed they could meet this congressional deadline. In making this decision, I received personal assurances from the presidents of General Motors, American Motors, the Ford Motor Co., and Chrysler that they would not be back again for another delay.

The Senate, in a decisive vote, has adopted a 1980 deadline by passing the Baker amendment. The House has given the industry more time. Once the conference committee makes a firm decision on this issue I urge the industry to accept it as final and bring all its resources to bear on meeting our common goal—a fuel-efficient, environmentally acceptable car.

Mr. President, I was gratified that the Senate adopted an amendment I sponsored with Senators METZENBAUM, HEINZ, and RANDOLPH to assure that this legislation will not prevent full utilization of our country's coal resources.

There has been some concern that utility companies and other coal-burning facilities located in the eastern parts of the country might try to skirt pollution control requirements by no longer using eastern coal, which has a higher sulfur content and requires the use of pollution control equipment, but by substituting low sulfur, western coal for it.

This response to pollution control responsibilities strikes me as being neither in the national interest nor in the interest of the people of my State. If eastern industries were freely permitted to meet their responsibilities by changing their traditional coal purchasing patterns, several unfortunate results would occur.

First, we would waste energy by transporting coal across country. Second, we would likely fail to meet the President's goals for coal conversion by not using all of our coal resources. And finally, Mr. President, we would risk shifting responsibility for industrial pollution from one source of pollution to workers and consumers. Jobs of eastern miners would be at jeopardy if industry were allowed to meet their responsibilities in this manner without any limits on their purchasing patterns. Consumers would also be forced to pay more for electricity and other products, because of the costs of western coal and transportation.

To avoid these unfortunate results, Mr. President, the Senate adopted an amendment I offered with my colleagues from Ohio, West Virginia, and Pennsylvania, which would permit the President to require a noncomplying source to buy local or regional coal, if buying western coal would result in severe economic disruption or unemployment.

In closing, Mr. President, I want to reiterate my support for this vital piece of legislation. As we get on with the Nation's business, it is important to have the guidelines S. 252 establishes to make sure that future growth does not come at the expense of the health of our citizens.

Mr. CRANSTON. Mr. President, if I may have the attention of the distinguished floor manager for a few moments, I would like to ask his assistance in clarifying the intent of the Clean Air Act with respect to the authority of a State to regulate air pollution emissions from oil tankers calling on ports within the State.

I would appreciate the comments of the Senator from Maine, the principal author of the comprehensive 1970 Act, as to whether the current law authorizes a coastal State to adopt and enforce emission standards, limitations or requirements on vessels for the purpose of preventing violations of national ambient air quality standards within the State?

Mr. MUSKIE. Yes, I believe the authority to regulate emissions from vessels is implicit in the 1970 amendments. Section 110 of the act requires EPA to approve State implementation plans which contain "emissions limitations * * * and such other measures as may be necessary to insure attainment and maintenance of such—ambient air quality—standard, including, but not limited to, land use and transportation controls."

Mr. CRANSTON. The State of California is concerned that in issuing a permit to construct a terminal facility for unloading Alaskan oil in the Port of Long Beach, pursuant to the requirements of the Clean Air Act, it is not certain what State or Federal entity, if any, has the power to enforce limitations on air pollutant emissions from tankers calling at the facility.

Mr. MUSKIE. Under EPA regulations, State implementation plans are required for preconstruction review of new air pollution sources. 40 CFR 51.18(b). The procedure must assure that emissions from the source itself, and from mobile source activities directly associated with the source, do not deter attainment or maintenance of the air quality standards.

Mr. CRANSTON. Does that mean that in granting a permit to construct an onshore facility a State may impose procedural or substantive conditions on the vessels that would use that facility for the purpose of assuring that those vessels would not cause violations of air quality standards onshore?

Mr. MUSKIE. Yes, emissions from vessels can be considered as part of the permit and conditions on the operation of vessels and would be valid to the same extent as other permit conditions for a stationary source.

Mr. CRANSTON. Is it your view, then, that the States' authority is limited to the review of vessels associated with new onshore facilities?

Mr. MUSKIE. No. Section 110 gives the States a very broad mandate to choose the sources of pollution they will regulate and the degree of regulation, so long as the air quality standards are met. That authority has been broadly interpreted by the Supreme Court in a unanimous decision in *Union Electric Co.* v. *Train*, 96 S. Ct. 2518, 2531 (1976). Vessels operating within the coastal waters of the United States or calling at facilities under U.S. jurisdiction, or such offshore facilities, to the extent that their emissions degrade air quality within the territory of a State, are certainly included within the

list of sources subject to State air pollution controls.

Mr. CRANSTON. Does EPA also have powers to impose emission standards, requirements or limitations on vessels?

Mr. MUSKIE. Yes. EPA has imposed controls on vessels loading and unloading in its implementation plan for the State of Texas. These regulations were adopted by EPA after the State had failed to act, as required by section 110(c) of the 1970 act. EPA's authority to regulate vessels was upheld by the Fifth Circuit Court of Appeals in *State of Texas* v. *EPA*, 449 F. 2d 289, 316–317 (1974). I believe that decision correclty interprets the law.

Mr. CRANSTON. I thank the Senator for his clarifications. His interpretations conform to my understanding of the 1970 act with respect to the States' authority to regulate tanker emissions.

Mr. President, to back up these remarks, I ask unanimous consent that two legal memorandums prepared by the Federal Energy Administration and the Environmental Protection Agency relating to this interpretation be included in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., May 23, 1977.

MEMORANDUM

Subject: State Authority to Regulate Ship Emissions

From: G. William Frick, General Council (A–130)

To: Douglas G. Robinson, Alaska Oil Project Coordinator, Federal Energy Administration.

At your request, we have reviewed the FEA General Counsel Memorandum of May 13, 1977, which addresses Clean Air Act issues. We agree with FEA's basic conclusion, which we would characterize as follows: a State may adopt and enforce emission controls on ships using the State's ports, and such controls may apply even when a ship may be as far as twelve miles from shore.

You already have our memo of August 10, 1976, which concluded as follows: "EPA (*and/or a State*) has authority under the Clean Air Act to impose on a proposed marine terminal facility, *and tankers bringing oil to it*, whatever restrictions may be necessary to insure attainment and maintenance of the ambient air quality standards." (Emphasis added.) Our memo basically focussed on EPA's authority (rather than State authority) and did not discuss the issue of how far from shore the controls could apply. In order to respond to the FEA memo of May 13, I will now elaborate on those points.

State authority. Perhaps the most fundamental principle underlying the Clean Air Act is that "the prevention and control of air pollution at its source is the primary responsibility of States and local governments." § 101(a)(3). Each State has the "primary responsibility for assuring air quality within the entire geographic area comprising such State." § 107(a). Even Federal facilities are subject to State and local control measures. § 118.

In order to assure such air quality, States are to develop implementation plans under § 110 which are to include "emission limitations . . . and such other measures as may be necessary to insure attainment and maintenance" of the ambient standards, "including, but not limited to, land-use and transportation controls." Under the Act, EPA is to promulgate implementation plan revisions under § 110(c) only as a last resort, when a State fails to submit a plan provision or submits an inadequate one.

If Congress' preference for State and local controls is not clear enough in the current Clean Air Act, both the House and Senate Committee Reports on now-pending Clean Air Act amendments make the point even more strongly:

"[T]his bill (H.R. 6161) is needed for several main purposes: . . . (2) to provide a greater role and greater assistance for State and local governments in the administration of the Clean Air Act." Clean Air Act Amendments of 1977, H.R. Rept. No. 95–294, May 12, 1977, at p. 1.

"The problem of air pollution exists at the State and local level. That is where the public understands the problem. That is where the resources must be directed. . . . The Federal role must be one of support rather than control. The Federal Government does not have and will not have the resources required to do an effective job of running the air pollution control programs of the States." Clean Air Act Amendments of 1977, S. Rept. No. 95–127, May 10, 1977, at p. 10.

Section 116 also stresses the primacy of State and local controls in the Clean Air Act scheme. It provides that except where the Act specifically pre-empts State action (such as in the area of new automobile and aircraft emission controls), the States and local governments are free to adopt and enforce any air pollution controls so long as such a control is not less stringent than any applicable Federal air pollution control. That Section 116's principles are essential and pervasive to the scheme of the Clean Air Act was emphasized by the unanimous Supreme Court decision, *Union Electric Co. v. Train*, 96 S. Ct. 2518. (1976).

In light of the clear Congressional preference for State and local controls, and in light of Section 110's directive that all controls as may be necessary to protect air quality in the State be utilized, we must logically start with the presumption that State and local air pollution controls may legally be imposed on ships with emissions which impact on the State's air quality.

This presumption is heavily buttressed by the Supreme Court's decision in *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440 (1960), which upheld on Constitutional grounds the City of Detroit's criminal ordinance limiting air pollutant emissions from ships. The Court rejected arguments that the Federal Government had pre-empted the field, citing a provision from the then-existing Clean Air Act (which remains in today's version at §§ 101(a)(3) and 107(a) as quoted above) making clear that the Act places primary control responsibility on States and local governments. 362 U.S. at 445–56. The Court also rejected arguments that State and local air pollution restrictions on interstate shipping impose an unconstitutional burden on interstate commerce.

The presumption is further buttressed by Judge Bell's opinion in *State of Texas* v. *EPA*, 499 F. 2d 289, 316–17 (5th Cir. 1974), discussed at page 5 of our memo of last August. While that decision upheld *EPA's* authority under § 110 to impose emission controls on ships, the decision did not turn on the fact that the challenged regulation was issued by EPA. Rather, the decision turned on the "emission limitations . . . and such other measures" language of § 110, which language applies to the *States* in the first instance and to EPA only as a last resort. (EPA had promulgated the regulation because the State had failed to develop an adequate plan.)

The only argument for rebuttal of the presumption which has come to our attention is the contention that the Ports and Waterways Safety Act of 1972 (PWSA) (33 U.S.C. §§ 1221 *et seq.*, 46 U.S.C. § 391a *et seq.*), places sole regulatory authority over shipping operations in the Coast Guard. Judge Bell explicitly rejected this argument in his *State of Texas* opinion, *supra*. He stated that there is "no merit in the suggestion of a lack of authority due to the Coast Guard's responsibility for safety regulations." 499 F. 2d at 317.

We are aware of *ARCO* v. *Evans*, Civ. No. C–75–648–M (W.D. Wash., Sept. 4, 1976), which held that the PWSA preempted certain State shipping regulations. We agree, however, with the analysis at pp. 10–12 of the FEA May 13 memo that *ARCO* is significantly distinguishable on its facts so as not to conflict with *State of Texas*.[1] Perhaps the most significant distinction is that in *ARCO*, the shipping regulations were based only on State police power jurisdiction and had no specific sanction under a Federal statute. Air pollution regulations, however, are obviously encouraged (and even required) by the Federal Clean Air Act.[2]

We note that Judge Bell stated in *State of Texas* that "There is no indication that the EPA will attempt to invade the domain of the Coast Guard or otherwise interfere with or jeopardize its provisions for maritime safety." 499 F. 2d at 317. Where an air pollution regulation could cause a ship to violate a Coast Guard safety regulation, we agree that significant legal problems could be created. We must presume that a State or EPA would not require measures causing violations of Coast Guard regulations, however. We are also informed that the Sohio conditions contemplated by California which are referenced in the May 13 FEA memo would not cause violations of Coast Guard safety standards.

Distance From Shore. We agree with the FEA conclusion that the State may enforce its ship emission requirements, through denial of entry to port, against violations occurring even twelve miles from shore so long as emissions within such zone may impact on air quality within the State.

The State is charged under § 107(a) with the primary responsibility for "assuring air quality within the entire geographic area comprising such State." If the State's basis for imposing ship emission limitations twelve miles from shore were merely to protect the air quality over the high seas, significant legal problems would be presented. We presume, however, that California has a rational basis for determining that emissions from up to twelve miles offshore may impact on air quality over the State.[3]

In light of the analysis on page 16 of the FEA memo on the sovereign's right to control access to its ports for reasonable purposes,[4] and in light of the Congressional directive that States should protect their own air quality with any necessary measures, we would conclude that ship emissions could be controlled by the State even beyond twelve miles from shore if necessary to protect the State's air quality.

FOOTNOTES

[1] We also agree that even on the facts before the Washington Court, the decision seems quite inconsistent with Supreme Court decisions and that the Supreme Court, which has granted *certiorari*, will probably reverse.

[2] The fact that the California new source review regulation (pursuant to which the Sohio conditions would be imposed) is not a formally approved part of the California implementation plan under Section 110 does not detract from California's authority to impose the proposed emission controls. The State's right under Section 116 to impose air quality controls is not contingent upon those controls being incorporated into an implementation plan. Even if this were a problem, it could easily be remedied: the State could submit the conditions to EPA as a plan revision, and/or EPA could include the same conditions in its own implementation plan

permit to Sohio (if the California new source regulation has not been approved by the time of permit issuance).

[3] Any conclusions California makes in this respect should be entitled to a heavy presumption of correctness. *Ethyl Corp.* v. *EPA*, 541 F. 2d 1, 24–25, 28 (D.C. Cir., 1976).

[4] Discussions we have had with international law experts in the State Department and within EPA have confirmed the correctness of the FEA analysis.

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., May 13, 1977.

Hon. JOHN M. HARMON,
Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, Washington, D.C.

DEAR MR. HARMON: At the request of the parties, the Federal Energy Administration has been acting as an informal coordinator and mediator in the ongoing administrative process by which the State of California's Air Resources Board is reviewing the compliance of a proposed Standard Oil of Ohio (Sohio) marine oil terminal at Long Beach with that State's air pollution control standards.

A major question that has arisen during the administrative process is whether the State has jurisdiction and authority to regulate pollutant emissions from oil tankers using the proposed terminal, while such tankers are operating beyond the three-mile territorial limit of the State but are still well within the South Coast Air Basin, which encompasses all of the Los Angeles/Long Beach region. Neither party is arguing that the State does not have such authority, but the State is reluctant to agree to the permit conditions proposed by Sohio, which conditions would have the indirect effect of regulating off-shore tanker operations, until it is convinced that it would have the legal authority to enforce such conditions. Until the parties reach agreement on this major legal issue, it appears that the permitting process for the project will remain at an impasse. Such a situation could well deprive the nation of an important energy project that would transport half a million barrels a day of Alaska North Slope crude oil to interior regions of the United States.

My office has analyzed the legal issues involved and has reached the conclusion that California does possess the requisite authority, as set forth in detail in the enclosed memorandum. Since the issue involves significant constitutional questions, I would very much appreciate it if you would review our analysis and provide us with your independent judgment on the legal issues that are discussed therein.

In view of the urgency of this project, I would appreciate a response as soon as possible.

Sincerely,

ERIC J. FYGI,
Acting General Counsel.

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., May 13, 1977.

MEMORANDUM REGARDING REGULATION OF OIL TANKER EMISSIONS

The Trans-Alaska Pipeline System is expected to become operational in late 1977, and will begin to supply 1.2 million barrels B/D of Alaska North Slope crude oil to the Port of Valdez by January 1978. About 700,000 B/D will be absorbed by refineries on the West Coast, although projections indicate that at least another 500,000 B/D will have to be transported to the central areas of the United States over the next several years in order to reach U.S. markets where both demand and refining capacity exist.

One of the principal transportation systems proposed to move North Slope crude oil to the interior of the U.S. is the so-called Sohio project, which would involve construction by the Sohio Transportation Company of a terminal facility at Long Beach, California capable of receiving 700,000 B/D of crude oil. A pipeline system, would be connected to that terminal, utilizing both new pipe and the reversal of an existing natural gas pipeline, and would move 500,000 B/D of North Slope crude oil to Midland, Texas, where it would feed into existing pipeline systems for ultimate delivery to refinery centers in the Midwest and on the Gulf Coast.

The Federal Government has reviewed the environmental impact of this project through the preparation of an environmental impact statement (EIS) that will be published in final form within the next few weeks. That analysis indicates that the major environmental problem posed by the facility is its potential adverse impact on air quality, as a result of emissions from tanker operations and on-shore storage tanks, in the Los Angeles air basin, which already has the country's most severe air pollution problems. The jurisdiction to review and regulate the emissions generated by the proposed terminal is currently shared by the Environmental Protection Agency (EPA) under the authority of the Clean Air Act and by State and local air resources control authorities under California State law, which imposes conditions on new source emissions similiar, but not identical to, those imposed by EPA. The State has not been delegated authority under the Clean Air Act to review new sources, since its State Implementation Plan with respect to such sources has not yet been approved by EPA. Under both Federal and State law, however, since the South Coast Air Basin is a "non-attainment" area (i.e., it has not attained the minimum ambient air quality standards established by EPA or the State), a new emission source such as the Sohio terminal is allowed to be built only if the builder achieves a reduction in the emissions from existing sources such that the new emissions are more than offset, and there is a net improvement in air quality.

The Federal, State and local bodies having jurisdiction over the proposed facility's emissions have, in the process of reviewing Sohio's application, encountered major problems with regard to their jurisdiction to control emissions from tankers using the facility, when those tankers are more than three miles from shore but still within the South Coast Air Basin. Sohio has proposed that, in order to reduce emissions to the maximum extent possible, it impose as a condition to any vessel using its terminal facility, that such vessel observe certain emission-reducing practices with respect to venting, ballasting, purging, burning of low-sulphur fuel and other tanker operations. The specific conditions that Sohio intends to impose are attached. Sohio is willing to include these conditions in its lease from the Port of Long Beach, a municipal entity, and in the air quality permits issued to it by the EPA and California Air Resources Board (ARB).

The ARB does not dispute the adequacy of these permit conditions *per se*. However, it is currently unwilling to accept them because of uncertainty regarding its jurisdiction to enforce them insofar as they apply to tanker operations beyond the three-mile limit but within the air basin. For the facility if the terminal itself met all the conditions of the permit, but tankers calling on the terminal failed to comply with the low-sulphur fuel requirements or other operational limitations when steaming into or out of the South Coast basin. The ARB is insisting that there be in place some authority, vested either in itself or some other Federal or State agency, to enforce the conditions, and that the legal basis for such authority be beyond question. It has suggested, among other things, that if the same requirements were imposed by the Coast Guard as part of its tanker regulations under the Ports and Waterways Safety Act of 1972, its need for an unchallengeable enforcement mechanism would be satisfied. In this connection, the following issues have been raised:

1. Has the U.S. Government authority to regulate air pollution from tankers, and if so, is the scheme of regulation so pervasive as to pre-empt California's police power in this area?

2. Assuming no pre-emption, would a regulation otherwise within California's police power be an unconstitutional burden on commerce?

3. What are the respective offshore limits of Federal and State jurisdiction to impose anti-pollution requirements?

This memorandum will discuss these issues.

I. THE FEDERAL GOVERNMENT HAS AUTHORITY TO REGULATE AIR POLLUTION BY TANKERS AT SEA, BUT CALIFORNIA IS MOST LIKELY NOT PRE-EMPTED FROM EXERCISING ITS POLICE POWER IN THIS REGARD

A. *The law applicable to pre-emption.* The authority to protect the environment and the health and safety of the public by regulating ships' activity on navigable waters located within or adjacent to a state, has long been recognized as an attribute of states' police power. See *Huron Portland Cement Co.* v. *City of Detroit, Michigan*, 362 U.S. 440, 443 (1960), upholding a local smoke-abatement ordinance notwithstanding federal license and approval of ships' boilers, and *Askew* v. *American Waterways Operators, Inc.*, 411 U.S. 325 (1973), upholding Florida's imposition of unlimited absolute liability for damages incurred as a result of oil spills in the State's waters, notwithstanding enactment of the Federal Water Pollution Control Act of 1970 and claims of exclusive Federal power to enact legislation involving maritime matters. In the Court's latest case dealing with pre-emption, *Jones* v. *Rath Packing Co.*, No. 75–1053, 45 U.S.L.W. 4323 (March 29, 1977), it stated that "Where, as here, the field which Congress is said to have pre-empted has been traditionally occupied by the States . . . [w]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)." [1]

The Court in *Rath* went on to state, however, that:

"[W]hen Congress has 'unmistakeably . . . ordained' . . . that its enactment alone are to regulate a part of commerce, state laws regulating that aspect of commerce must fall. This result is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose. [citation omitted]

"Congressional enactments that do not exclude all state legislation in the same field nevertheless override state laws with which they conflict. U.S. Const., Art. VI. The criterion for determining whether state and federal laws are so inconsistent that the state law must give way is firmly established in our decisions. Our test is 'to determine whether, under the circumstances of this particular case, [the state's] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1940)." 45 U.S.L.W. 4324–5.

In determining whether the state law is an "obstacle" to Congress' purpose, the Court has held that "the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one completely ousted.' " *Merrill, Lynch, Pierce, Fenner and Smith, Inc.* v. *Ware*, 414

Footnotes at end of article.

U.S. 117, 127 (1973), quoting *Silver* v. *N.Y. Stock Exchange*, 373 U.S. 341, 357 (1963). In *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142 (1963), the Court dismissed the suggestion that the test is whether the purposes of the two laws are parallel or divergent, stating that "the test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing federal superintendence of the field, not whether they are aimed at similar or different objectives."

With this in mind, it is necessary to determine whether Federal authority to regulate tanker emissions exists, and if so, if it is pre-emptive.

B. *The Clean Air Act.* Under the Clean Air Act, 42 U.S.C. 1857 *et seq.*, the Administrator of EPA is authorized to issue national primary and secondary ambient air quality standards under § 1857c–4, which are put into effect pursuant to state implementation plans authorized by § 1857c–5. Where the state plan fails to implement the standards, or implements them inadequately, EPA can do so directly. The Act specifically preserves the states' police power to enact pollution control measures, and provides at § 1857d–1 that:

"Except as otherwise provided [in sections not applicable here] nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitations respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under [sections dealing with new stationary sources or hazardous pollutants], such State or political subdivision may not adopt or enforce an emission standard or limitation under such plan or section."

California intends to exercise its authority under State law (see Health and Safety Code §§ 40702, 41601, 41700, 41702–3, 42300–301) to control emissions associated with the Sohio project, including emissions from tankers calling on the proposed terminal, if possible, by imposing the permit conditions contained in the attached list. The question to be decided, therefore, is whether the type of limitations on tanker operations proposed to be included in the Sohio terminal permit adopt or enforce standards or limitations less stringent than those that would be applicable under the Clean Air Act and are therefore pre-empted by virtue of § 1857d–1.

In a memorandum dated August 10, 1976, the Environmental Protection Agency asserted that "EPA (and/or a State) has authority under the Clean Air Act to impose on a proposed marine facility, and tankers bringing oil to it, whatever restrictions may be necessary to insure attainment and maintenance of ambient air quality standards." Careful review of the relevant authorities suggests, that this view is correct.

Under § 857c–5(a)(2)(B), EPA is required to approve state implementation plans which contain "emission limitations . . . and such other measures as may be necessary to insure attainment and maintenance of such [ambient] standard, including, but not limited to, land use and transportation controls." EPA has, by regulation, interpreted 'other measures' to include new source review regulations. 40 CFR 51.18. (It should be noted that "new sources" are defined as new *stationary* sources.) State implementation plans must therefore have new source review regulations that subject new air pollution sources to pre-construction review, and must operate to prohibit new sources which would prevent the attainment and maintenance of the national ambient standards. 40 CFR 51.18 (b).

While any new terminal is, in itself, a stationary source of air pollution, the oil tankers which supply it (and are mobile) contribute pollution which is necessarily related to the terminal in a "but for" sense. Under 40 CFR § 51.18(a), each plan must set forth procedures so as to insure that attainment of ambient standards will not be deterred "either directly because of emissions from the [new source], or indirectly, because of emissions resulting from mobile source activities associated with it." 40 CFR 51.18(c)(1) specifically requires that the owner or operator of the source under review submit information concerning "the nature and amount of emissions to be emitted by it or emitted by associated mobile sources". EPA's "Interpretative Ruling for Implementation of the Requirements of 40 CFR 51.18," 41 FR 55528 (Dec. 21, 1976), states at n.3 that "Where a new source will result in specific and well defined indirect or secondary emissions which can be quantified, the reviewing authority should consider such secondary emissions in determining whether the source would cause or exacerbate a violation of the [National Ambient Air Quality Standards]."

Thus, in exercising its permit authority over the construction of a new stationary source, such as the terminal and its storage tanks, EPA (or a state agency delegated authority under the Clean Air Act) must thoroughly assess tanker emission identifiable to the terminal in order to determine its actual impact. Under the applicable trade-off policy, the applicant for the new-source permit would have to demonstrate that emission reductions from existing sources could be traded-off against the new emissions, which necessarily include the tankers associated with the terminal's construction. EPA's new source review permit could thus expressly require, as enforcible conditions as well as conditions to issuance of the permit, that the terminal applicant assure that the tankers adopt specified emission limitations or devices and procedures to reduce emissions.

It also appears to be possible that a more direct approach, omitting any reference in the permit to the applicant's control of the tankers and imposing emission controls on the tankers themselves, is possible under the Clean Air Act. Authority for such an approach, as for new source review, would also be found in § 1857c–5(a)(2)(B), *supra*. EPA takes the view, which seems correct, that the broad scope of this language makes it unnecessary to attempt to categorize oil tanker emissions in the traditional mobile/stationary source classification. In *State of Texas* v. *EPA*, 499 F. 2d 289, 316–317 (5th Cir. 1974), the court upheld EPA emission controls on vessels (where the state had failed to act) during loading and unloading, relying on the broad language of § 1857c–5(a)(2)(B). While the case concerned only stationary vessels, it seems clear that the expansive construction given EPA's general authority would permit it (and consequently a state) to regulate emissions from tankers at sea. See, e.g., *South Terminal Corp.* v. *EPA*, 504 F. 2d 646, 669 (1st Cir. 1974), upholding EPA's imposition of parking controls (again to correct state action) where the court stated that:

"We are inclined to construe Congress' broad grant of power to the EPPA as including all enforcement devices reasonably necessary to the achievement and maintenance of the goals established by the legislation."

In *Train* v. *NRDC*, 421 U.S. 60, 79 (1975), the Supreme Court held that "the State [delegated authority under the Clean Air Act] is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation," In *Union Electric Co.* v. *Train*, 96 S. Ct. 2518, 2531 (1976), the Court held that the Clean Air Act may require costly, technology-forcing measures where necessary to the attainment and maintenance of ambient standards, and stated that "Congress plainly left with the States, so long as the national standards were met, the power to determine which sources would be burdened by regulation and to what extent." If the EPA or a State that has been delegated Clean Air Act Authority is attempting to curb pollution where national standards are being exceeded, it is likely that its discretion to impose controls on tankers would be at its greatest.

The Clean Air Act therefore appears to confer on EPA or a delegated State substantial authority to regulate tanker emissions. However, we have been advised by EPA that no specific tanker emission standards have been required by EPA and that the standards and conditions that have been proposed for the Sohio terminal are no less stringent than "the EPA would impose under its existing new source review authority in California. Thus, it seems clear that the Clean Air Act does not pre-empt compatible regulatory activity by California, and, indeed, that it defers to State regulatory authority in the first instance. More difficult problems arise with respect to the Ports and Waterways Safety Act of 1972.

C. *Ports and Waterways Safety Act of 1972.* The Ports and Waterways Safety Act of 1972 (PWSA), 33 U.S.C. 1221 *et seq.*, 46 USC 391a *et seq.*, provides at § 1221 that "in order to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damage, destruction, or loss," the Coast Guard may regulate vessel traffic routes, operations under hazardous conditions, pilotage, cargo handling, and safety specifications. In *Atlantic Richfield Co.* v. *Evans*, Civ. No. C–75–648–M (W. D. Wash, Sept. 24, 1976), the court held that the Act pre-empted regulations by the State of Washington limiting tanker size, and requiring minimum design specifications and locally licensed pilotage for tankers operating within Puget Sound. The court stated that the purpose of the Act was:

". . . . to establish a uniform set of regulations governing the types of ships permitted within the coastal waters of the United States and the conditions under which they would be permitted to operate. Balkanization of regulatory authority over this most interstate, even international, of transportation systems is foreclosed by the national policy embodied in the PWSA."

The court stated further that "Since the PWSA introduced environmental considerations into the federal tanker regulations, the State of Washington cannot say that there is 'no overlap' between the state and federal laws." In view of the sweeping interpretation given the Act by the court, and its implication that all environmental regulation of tankers now resides with the Coast Guard, the case is of crucial importance to our own question.[2] It is currently on appeal to the Supreme Court, and it may be advisable to await the Court's decision.

However, an analysis of the PWSA in light of the cases discussed above, and of its own language, suggests that even if the court is right on the facts in *Evans*, its characterization of the PWSA is too broad to require preemption of local laws dealing with air pollution from tankers.[3]

No "clear and manifest" intent to occupy the entire field of tanker regulation can be found in the PWSA. Specifically, its concern with environmental protection extends only to the waters and marine life, and makes no mention of air pollution onshore. Thus there is no reason on the face of the statute to

Footnotes at end of article.

suppose that Congress intended to depart from the general rule stated in *Huron Portland Cement, supra*, at 442: "in the exercise of [police] power, the states and their instrumentalities may act, in many areas of interstate commerce and maritime activities, concurrently with the federal government." Moreover, even if the PWSA is intended to be a comprehensive scheme of tanker regulation, comprehensiveness alone cannot be equated with an intent to pre-empt. See, e.g., *DeCanas* v. *Bica*, 424 U.S. 351 (1976) and *N.Y.S. Dept. of Social Services* v. *Dublino*, 413 U.S. 405 (1973), holding that comprehensive federal statutory schemes may still leave the states with broad powers to achieve complementary goals.[4] As suggested above, tanker regulation to control air pollution onshore would be precisely such a complementary goal, which would not impair the general "federal superintendence" of tanker regulation (under the PWSA) as required by *Florida Lime and Avocado Growers, supra*. Moreover, the requirements that would be imposed by California (see attached) *appear* (to one not expert in tanker operation) to create no conflict with Coast Guard regulations, (see Titles 33 and 46 of the Code of Federal Regulations), such as to present an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Rath, supra*, at 230.[5] As the Court held in *Port Huron Cement* and *Askew, supra*, the Court will look to actual rather than potential conflicts where environmental regulations are involved. Of course, if expert testimony were to demonstrate that design changes or operating procedures incompatible with Coast Guard regulations would in fact be necessary, in that case California likely would be required to yield.

One final point to be made in this connection, is that the court in *Evans* states that the regulations established under the PWSA would be uniform, and that any State action would be pre-empted on these grounds. Yet the courts have consistently recognized local regulation over navigable waters to protect public health and safety, and the Act itself recognizes that operating and design requirements may depend upon such factors as the environment and geographic location in which the ship is operating. In light of these local variations, there is no inherent need for exclusive federal control, and thus no reason to imply pre-emption.

II. ASSUMING NO PREEMPTION, THE PROPOSED CALIFORNIA AIR POLLUTION CONTROLS WOULD NOT IMPOSE AN UNCONSTITUTIONAL BURDEN ON COMMERCE

In *Huron Portland Cement, supra*, at 443, the Court held that the Constitution "never intended to cut the states off from legislating on all subjects relating to health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country." The tests which have evolved to determine whether a local regulation interferes with the free flow of commerce contemplated by the Commerce Clause, were summarized in *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970):

"Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows:

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Portland Cement Co.* v. *City of Detroit*, 362 U.S. 440, 443, 80 S.Ct. 813, 816, 4 L.Ed. 2d 352. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities."

Courts also cite to the doctrine that states cannot regulate those phases of commerce which, because of the need for national uniformity, demand that their regulation, if any, be prescribed by a single authority. *Minnesota Rate Cases*, 230 U.S. at 399, 400 (1913); *Edwards* v. *California*, 314 U.S. 160, 176 (1941); *Port Huron Cement, supra* at 444.

Of course, before applying the test in *Pike*, it must be recognized that under *Union Electric, supra*, the states have almost unfettered discretion under the Clean Air Act. Indeed, § 1857d-1 has as its premise that lack of uniform requirements among the states is permissible. Thus if Congress, in exercise of its power under the Commerce Clause (bolstered by the Supremacy Clause), determines that the uniform rule shall be lack of uniformity, and that commerce between the states may be reciprocally burdened, then virtually no court is likely to find California's standards unconstitutional. Cf. *Askew, supra*, where, with a similar non-pre-emption provision, the court held that uniformity with regard to damages imposed for oil spills was not required so long as there was no conflict with federal law, although it based its decision primarily on general principles concerning the scope of federal maritime jurisdiction. If in considering the Clean Air Act, the Court held that the non-preemption clause had only a narrow meaning, and limited *Union Electric*, then a conventional analysis of burdens would be required.

Accordingly, applying the test of *Pike, supra*, the "burden" imposed by the California regulations on interstate commerce, would be the impairment of some ships' ability to deliver oil to Long Beach, since they may not be equipped or be able to be operated in conformity with such regulations. However, the Supreme Court has consistently supported local measures which restrict in some manner the use of navigable waters. See *Huron Portland Cement, supra; South Carolina Highway Dept.*, v. *Barnwell Bros.*, 333 U.S. 177 (1938), regulating oversized vessels used in commercial transportation; *Clyde Malloy Lines, Inc.* v. *Alabama*, 296 U.S. 261 (1935), regulating harbor and docking facilities; *Pelly* v. *Washington*, 302 U.S. 1 (1937), regulating motor-driven tugs. Thus, in light of California's demonstrable need to control pollution from every source, the argument of excessive burden is very likely to fail. Indeed, many of the requirements proposed by California represent the best modern usage, advocated by numerous tanker experts, required or encouraged by the Coast Guard, and already being adopted by designers and operators. Of course, if it could be demonstrated that the equipment required would necessitate massive retrofitting of a large portion of the ships employed in trading with the West Coast, or that the procedures to be used are massively expensive, a different result might obtain.[6] Such determinations must, of course, await the establishment of a factual record. It may also be possible to argue that the same results can be achieved by utilizing other equipment or procedures, and, again, technical expertise must be brought to bear. However, any such countervailing arguments would have to be balanced against the great weight given to localities' concern with pollution in such cases as *Port Huron Cement* and *Askew, supra*.

Under *Pike*, therefore, it is likely that the proposed state requirements, absent strong evidence to the contrary, would not impose an unconstitutional burden on interstate commerce.

The need for uniformity in ship's outfitting and operation would also be difficult to support in light of the Court's consistent recognition of local communities' needs. However, it could be asserted that U.S. foreign commerce would be burdened unduly by the proposed requirements, thus impairing U.S. foreign relations. (As a practical matter, most of the crude entering the terminal would be Alaskan, which under the Jones Act would be carried in U.S. ships. However, since foreign crude might also enter the terminal, the need to consider the effect on foreign shipping cannot be dismissed.) Under *Zscherwig* v. *Miller*, 389 U.S. 429, 432 (1968), a state cannot adopt measures which constitute "an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress." In *Zscherwig*, the Court invalidated an Oregon statute dealing with reciprocal inheritance, on the grounds that it had more than an incidental or indirect effect on foreign countries, and had great potential to disrupt and embarrass U.S. foreign policy. This suggests that a general balancing of state and national interests, such as that under the Commerce Clause, would be appropriate if a court found that by enacting § 1857d-1 the Congress had not authorized states to burden U.S. interstate commerce without being subject to traditional considerations. It is certainly possible that if the traditional reasoning of *Zscherwig* were applied, the proposed regulations would have more than an incidental effect, and that they could impair U.S. international relations. The cases upholding state authority to regulate the use of navigable waters have not squarely considered this issue, although *Askew* probably comes closest. To avoid any such risk, therefore, the United States itself could impose the requirements,[7] or foreign shipping (likely to be a relatively small part of the total) could, as in *State* v. *Bundrant*, 546 P. 2d 530 (Alaska Sup. Ct. 1976), be exempted. (*Bundrant* is discussed, *infra*.)

III. THE UNITED STATES (OR ANY POLITICAL SUBDIVISION NOT OTHERWISE PRE-EMPTED OR PROHIBITED) CAN REGULATE ACCESS TO ITS PORTS NOTWITHSTANDING THAT SUCH REGULATION AFFECTS CONDUCT BEYOND ITS TERRITORIAL WATERS

The Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1608, explicitly provides that a nation does not violate the rights of another nation under international law by setting the "breadth" of its territorial sea at three miles. See *U.S.* v. *California*, 332 U.S. 19 (1947), recognizing U.S. territorial sovereignty within the three-mile limit. However, the authority of the United States (or any political subdivision) to impose requirements on tanker operations more than three miles offshore must find its basis in some other expression of international law. Such authority is critical, since California proposes to extend its requirements 12 miles offshore.

With regard to U.S. citizens (i.e., ships of U.S. registry), the question is simple, in that, except where statutes provide otherwise, the United States has jurisdiction over the acts of its citizens no matter where they occur. Restatement 2d, *United States Foreign Relations Law*, § 30. Under *Skiriotes* v. *Florida*, 313 U.S. 79 (1941), upholding application of a Florida penal statute to a Florida citizen who illegally harvested sponges outside the three-mile limit, any state of the United States has similar jurisdiction, provided it is not pre-empted or otherwise prohibited. Moreover, if the permit were conditioned in such a manner that Sohio itself was directly responsible for maintaining air quality standards, jurisdiction would be over a U.S. (and California) citizen in the first instance. Whether California, by means of a condition to be enforced by a private person (e.g., by contract with those using its facilities), could "indirectly" regulate commerce with other nations, where (as discussed *supra*) it could not do so directly, is an interesting question that is almost surely answerable in the negative.

Footnotes at end of article.

With regard to foreign citizens, the question is made somewhat easier, in that California's rules are conditions for use of the terminal, which "will apply to the voyage of those vessels discharging their cargo at the Sohio Marine Terminal and are not binding upon the vessels when calling at other marine terminals."[8] The conditional posture of these rules, applicable only to vessels actually using the port (notwithstanding that they may otherwise be within territorial waters), is decisive, since it invokes the immemorial right of sovereigns to regulate access to their ports. See 4 Whiteman, *Digest of International Law* (1965), 259–260, citing the modern authorities including Higgins and Colombos, *International Law of the Sea*, 2d Ed. § 140, and Fiore, *International Law Codified*, 183. A sovereign can predicate such access on any conduct, provided that the predicate is reasonable and evenhanded (9 Whiteman, *supra*, 107–113); *the place of the conduct is irrelevant*. Thus, from time to time the United States has banned entry to vessels that have called at the ports of other countries, either for health or political reasons. (It should be noted that for purposes of international law, action by the federal or state government would have the same consequences. The only issue is whether, under U.S. law, California would be preempted or otherwise prohibited from regulating access to its ports.) Moreover, an examination of the relevant international agreements touching on conduct at sea and entry to ports does not reveal any requirement contravened by California's regulations. See e.g., Convention of Safety of Life at Sea, 16 U.S.T. 185.

A more subtle question is whether conditions for entering a port may control conduct upon leaving; clearly, California's proposed rules envision such control. There appears to be no reason why a condition subsequent would be impermissible under international law, although jurisdiction for purposes of imposing a fine could only be had once the the ship next entered port.[9] Of course, if the Sohio Terminal itself, as a condition of its permit, were made responsible for all ships using its facilities, and this were a valid condition as to foreign ships, then any fine would be payable even before the ship's next call.

Assuming that the authority to enforce the proposed rules is to be found in the sovereign's right to condition entry into its ports, it will be unnecessary to rely on cases considering whether the activity of vessels outside the three-mile limit may be regulated generally. The only case holding squarely that vessels operating outside the limit, to the detriment of coastal waters, are subject to regulation *notwithstanding citizenship* is *State* v. *Bundrant*, 546 P. 2d 530 (Alaska Sup. Ct. 1976). In that case, the Alaska Supreme Court upheld Alaskan regulations over harvesting king crab both inside and outside the three-mile limit, as applied to citizens of all states. However, the case is only of limited utility, since the court specifically noted that the regulation was not being enforced against non-U.S. citizens, that there was therefore only incidental disruption of U.S. foreign relations, and that Alaska "may never possess authority over foreign fleets in the crabbing area." *Id.* at 542. Moreover, an earlier, and related Federal case, *Hjelle* v. *Brooks*, 377 F. Supp. 430 (D. Alaska, 1974), held that on grounds of conservation, a state may regulate extraterritorial conduct only if the regulations facilitate conservation of a resource clearly within a state, and that Alaska's earlier attempt at regulation and did not have the requisite nexus. In our own case, the nexus between tanker activity outside three miles, and enforcement of ambient air standards in the basin as a whole, would be beyond factual dispute.

Assuming, therefore, that international law will be invoked, it should be recognized that the statutory authority (as opposed to state police power) under which the applicable conditions would be imposed, could limit authority otherwise available. The Clean Air Act provides that Air Quality Control Regions be formed from state territories, and that states be responsible for the air quality within their own borders. However, there is no suggestion in the Act that this mandate prohibits the protection of air quality where it is degraded by pollutants coming from outside Federal or state territory. Indeed, the Act encourages states to solve common problems. On the other hand, the PWSA, which authorizes control of "navigable waters," has been interpreted by the Coast Guard to permit imposition of conditions only within the three-mile limit. Thus, any conditions imposed beyond the three-mile limit should derive either from the Clean Air Act, new legislation, or state police power.

IV. CONCLUSION

In light of the foregoing, it seems relatively clear that California authorities could impose emission controls on tankers using Sohio's terminal, even where such controls affect conduct outside territorial waters. Under the Clean Air Act, the Federal Government can act where the state has not. The burden on interstate commerce, or on U.S. foreign relations, could affect this conclusion, depending on whether the non-preemption provision in the Clean Air Act is read broadly, and (in the unlikely event it is not) on the actual burdens imposed as evidenced in a complete factual record.

FOOTNOTES

[1] In *Rice*, the Court stated that:

"Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. . . . Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. . . . Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. . . . Or the state policy may produce a result inconsistent with the objective of the federal statute." *Id* at 230.

[2] The issue of whether the PWSA preempts action under the Clean Air Act was not raised in *Evans*. It was, however, raised in *State of Texas, supra*, where the court rejected arguments that the Coast Guard's jurisdiction of marine safety was exclusive. *State of Texas* is not addressed in *Evans*, and is interesting because it suggests that the PWSA is not the only authority under which shipping may be regulated. The court states, however, at 317, that "There is no indication that EPA will attempt to invade the domain of the Coast Guard or otherwise interfere with or jeopardize its provisions for marine safety."

[3] Indeed, there is significant question as to whether the court is right even on the facts in *Evans*, where the state's action presented a more direct conflict with the PWSA than do the regulations under consideration here. Senator Warren Magnuson, Senate sponsor of the PWSA, stated that:

"As the sponsor of that Act [the PWSA] in the Senate, I have made known my disagreement with the decision. I think it is wrong; I feel the Court has simply misread the intent of Congress as contained in the Ports and Waterways Safety Act. The weakness of the decision is highlighted by the complete absence of any analysis of the terms of the Act. The Court's reasoning was simplistic at best. Preemption is not favored in the law. Congress must show a clear intent to preempt before such a finding is made. This court summarily reached its decision on the thinnest of reasoning. I say they are wrong." Vol. 122, CONGRESSIONAL RECORD, p. 34419, October 1, 1976.)

Nor did the court recognize that its characterization of the PWSA would repeal by implication a portion of the Clean Air Act, which repeals are not favored in the law.

[4] See, e.g., *Dublino* at 415, where the Court stated that: "We reject, to begin with, the contention that preemption is to be inferred merely from the comprehensive character of the federal work incentive provisions [of the Social Security Act]. . . . The subjects of modern social and regulatory legislation often by their nature require intricate and complex responses from the Congress, but without Congress necessarily intending its enactment as the exclusive means of meeting the problem, c.f. *Askew* [*supra*]."

[5] Cf. *Florida Lime and Avocado Growers, supra*, where the Court held that the record failed to show any inevitable collision between Federal marketing orders under the Agricultural Adjustment Act adopting a calendar test of maturity for avocados grown in Florida, and a California statute adopting a percentage-of-oil test, such as to require the California statute to yield, and *Askew* v. *American Waterways, Inc., supra*, at 331, where the Court carefully delineates the purview of each statute, and finds a "harmonious whole" rather than conflict.

[6] Cf. *California Lime and Avocado Growers, supra*, holding that the California statute did not deny equal protection to Florida growers, but remanding for new trial the issue of whether application of California's statute burdened or discriminated against interstate commerce by excluding Florida avocados from California.

[7] Presumably, EPA approval of an amendment to the state's implementation plan imposing such regulation would remove any risk of unauthorized interference with United States commerce, since it is presumably only delegating authority conferred by a federal statute.

[8] To some extent, the statement that the rules need not be applied at other ports is misleading, since construction features mandated by the regulations, such as inert gas systems, are hardly likely to be dismantled for the purpose of voyages to other terminals. Operation requirements, however, such as the burning of low-sulphur bunker fuel, can be observed selectively.

[9] There are no apparent plans to give chase, and jurisdiction for this purpose is not discussed.

An alternate theory on which to impose liability for violation of the regulations, either before or after entering port, is that acts outside a sovereign's territory, having substantial and foreseeable effects therein, are subject to the sovereign's jurisdiction once the offender enters the territory. See Restatement 2d, *supra*, § 17. This theory has been applied in the area of economic regulation, especially with respect to the antitrust laws.

[Attachment]

PROPOSED PORT RULES FOR LONG BEACH TO TEXAS PIPELINE MARINE TERMINAL

The following conditions are proposed to provide assurance of necessary environmental safeguards for tanker operations at the proposed Pier J tanker terminal in Long Beach. These conditions will apply to the voyage of those vessels discharging their cargo at the SOHIO Marine Terminal and are not binding upon vessels when calling at other marine terminals.

(1) The master shall insure that vessels utilizing the terminal have sufficient segregated ballast capacity, or are otherwise equipped, to permit the ship to be able to sail from the terminal to a point opposite

Point Mugu* without taking ballast into cargo tanks and displacing hydrocarbon vapors into the atmosphere. Ballasting operations which result in hydrocarbon emissions and which occur within an area south of Point Mugu and within 12 miles of the California Coast shall constitute a violation of terminal rules and shall subject the offending vessel to a penalty as specified under item 9.

(2) No deliberate expulsion of hydrocarbon vapors from cargo tanks to the atmosphere shall be allowed in the area between and including the terminal, a point opposite Point Mugu, and within 12 miles of the California Coast, except when gas freeing is necessary for emergency repairs.

(3) All unloading operations will be handled using procedures which minimize fugitive emissions. Ullage covers shall not be opened while in port or at any point south of Point Mugu, except for those brief periods necessary for cargo inspection or gauging activities.

(4) Use of the terminal will be limited to vessels equipped with an inert gas system, and operation of the system will be required at all times during unloading. New technology other than inerting which results in an equivalent condition of safety and level of emissions shall also be acceptable.

(5) Steam driven vessels shall not "blow tubes" in the harbor area unless safety reasons demand it due to an unanticipated protracted stay in port or boiler operating safety requirements.

(6) Unloading operations shall be conducted in accordance with IFS Title 33 Parts 154, 155, 156 and shall not begin until such time the vessel or the terminal berth enclosure is properly boomed as a preventive measure against accidental oil spills. A boom is also to be in place during berthing operations and all internal transfers of oil or dirty ballast.

(7) All vessels shall commence using a fuel not exceeding a 0.5 percent sulfur content prior to entering an area south of Point Mugu and within 12 miles of the California Coast, while in the harbor, and upon departure until exiting that same area.

(8) Monitoring of tanker-related air emissions—specifically purging, gas freeing, and cargo tank ballasting—shall occur commencing at Point Mugu, during movement within the harbor, while unloading at the berth, and during departure within an area south of Point Mugu and within 12 miles of the California Coast. Air emissions and associated tanker operations shall be monitored under procedures established by the Long Beach Harbor Department or an appropriate third party. The specific procedures, parameters, and logistics are to be resolved at a later date. All records of such monitoring shall become public information, available for inspection on demand.

(9) Any emissions resulting from a failure to comply with any of the conditions noted above will subject the offender to a maximum $25,000 penalty. The dollar amount of the penalty will be assessed on a sliding scale, taking into account (1) the severity of the offense, (2) whether it was accidental or intentional, and (3) whether the action was taken to protect the safety of the ship, crew, or cargo, or to prevent a more serious environmental conseqeunce. The decision to impose a penalty as well as its dollar amount will be made by a third party selected by the Port of Long Beach, the terminal operator, and an appropriate California or Federal agency.

(10) A citizens environmental committee or comparable group shall be formed in order to consider those comments and complaints initiated by the general public. Said Committee to consist of individual representatives or organizations such as the following: (1) League of Women Voters, (2) Long Beach Chamber of Commerce, (3) Sierra Club, (4) the Terminal Operator and Port of Long Beach (as ex officio members).

(11) All vessels which use the terminal will utilize a pilot. The pilot will be on board at all times necessary to comply with established pilotage regulations.

(12) All vessels shall employ tug boats on docking and undocking which shall meet and leave the ship, assisting as may be required, to, and from the Queensgate breakwater entrance, except if tugs are unavailable due to causes not within the control of the terminal operator.

(13) The master of each vessel shall insure that his main propulsion engines are fully operational and any deficiencies called to the attention of the pilot upon boarding of the vessel or sooner if necessary.

(14) The above rules recognize that the master has responsibility to insure the safety of his crew, ship, and cargo as well as to prevent or minimize environmental damage. The master, therefore, shall have the responsibility of taking appropriate actions when necessary to insure the safety of his vessel, even if it requires violation of one or more of the above conditions. Violation, however, for reasons of safety, will not relieve the terminal operator of the penalties listed in Section 9.

Mr. THURMOND. Mr. President, I am somewhat concerned about the impact of section 16(b) of the bill on our military combat and combat-related sources during the period between enactment of this measure and the issuance of Presidential exemptions for such equipment.

Will States and local governments have authority to impose their air emission standards and permit requirements on our military aircraft, Navy and Coast Guard vessels, tanks, and other military equipment during this interim period?

I also would inquire whether the President, under this amendment, would have the authority to issue broad, categorized exemptions covering a wide range of military equipment, or will he be constrained to issue exemptions for individually identified aircraft, vessels, or other equipment?

Mr. MUSKIE. In answer to the Senator's question concerning State and local enforcement of their regulations between enactment of this amendment and issuance of Presidential exemptions, under this amendment, State and local governments are authorized to enforce substantive and procedural standards and procedural requirements for military combat and combat-related sources. I realize that imposition of these requirements may cause a hardship for the Department of Defense in attempting to comply, particularly in respect to conflicting air emission standards and permitting procedures. I would expect, however, that immediately following enactment, the Secretary of Defense would identify classes and categories of uniquely military equipment and property for which he intends to seek a Presidential exemption, and that he notify the President of his intention. Once identified, I would hope that State and local officials would respect the legitimate national defense determination of the Secretary of Defense in this respect, and that they would refrain from enforcing State and local air pollution regulations which otherwise might apply to such identified classes or categories until the President has had a reasonable opportunity to act.

In response to the Senator's second question, the amendment specifically authorizes the President to issue broad exemption for any weaponry, equipment, aircraft, vehicles or other classes or categories of property which is uniquely military in nature.

I think that this grants the President broad discretion in identifying classes or categories of property which are uniquely military in nature, and in promulgating regulations exempting such property.

Mr. HATCH. I wanted to vote for this bill. However, I believe it to be grossly unfair to Utah and a number of other States. I believe my respected colleagues could have been much more flexible and reasonable on a number of the amendments. Although I am an advocate of clean air, a balance between growth and the environment, and much within the bill, I cannot under the circumstances vote for it at this time.

EMISSION CONTROL COMPLIANCE SCHEDULES AND WARRANTY PROVISIONS

Mr. BROOKE. Seven years ago, we passed the first comprehensive national laws to insure a cleaner environment, the Clean Air Act. Since the time we passed that landmark legislation, we have relaxed its provisions twice. In 1974, we amended the act to extend interim standards for 1 year and we gave the Administrator of the Environmental Protection Agency—EPA—the authority to extend them for another year. Nearly 1 year later, he exercised that authority.

Now, we are faced once again with the opportunity to turn back the timetable and retreat from our earlier commitment to clean air. We have the choice to either insist upon stringent automobile emission standards or to allow such pollutants as nitrogen oxide to continue to be emitted at their present levels and run the risk of increasing health problems. I, for one, have decided to support a strong compliance schedule for meeting auto emission standards and a strong consumer protection provision for new car buyers.

I must tell you, quite honestly, that this has not been an easy decision for me. While I am committed to the fight to clean up our environment, I did not brush aside the arguments concerning the effects of these provisions upon jobs.

I have had a considerable amount of time to study the facts and figures regarding the impact of tough auto emission standards upon employment. As my colleagues will remember, we considered these same alternatives for clean air last year. At that time, and since then, I have continued to study the issue.

Concerned members of the automotive aftermarket industry have been worried that a five year or 50,000 mile performance warranty for auto emission control devices would be anticompetitive and a boondoggle for the manufacturers.

Many of the smaller auto repair shops and full-service gasoline stations in my

*Point Mugu is located approximately 60 miles north of the Port of Long Beach.

State of Massachusetts are run by independent businessmen. During my tenure in the Senate, I have sought to assure them of more job security. For example, my decision to cosponsor legislation making it harder for major oil companies to terminate leases for these independent businessmen was based on that commitment. I do not want to jeopardize their future success in any way.

I believe the provisions in the bill preserve their job security. These provisions:

First, prohibit an auto manufacturer from conditioning the emission performance of a vehicle on the use of any component or service specified by brand, trade or corporate name unless the auto manufacturer satisfies the Administrator that the component or service must be used for the proper functioning of the vehicle;

Second, prohibit the manufacturer from including any service or component use conditions in any written maintenance instructions furnished with the vehicle;

Third, require the manufacturer to bear the replacement cost of any part principally used for emission control which is scheduled for replacement during the useful life of the vehicle and whose cost is greater than 2 percent of the vehicle's retail cost; and

Fourth, require the Federal Trade Commission—FTC—to study the potential impact on competition of any warranty requirement for 1 year;

Fifth, establish a program for standardizing aftermarket parts.

I am convinced that a 5-year performance warranty would not be anticompetitive and drive away customers from smaller auto shops to larger service centers run by the auto manufacturers. According to a provision in the amendments, manufacturers cannot specify components or service by brand, trade or corporate name. I believe that the provision can successfully cut, in the consumers mind, the band which would tie warranty work or maintenance work to car dealers. By establishing the program for standardizing aftermarket parts and by mandating the FTC study of anticompetitive effects, consumers will not hesitate to continue having their cars serviced by small independent service stations.

As time goes on and consumers get accustomed to having their emission control devices inspected and repaired, I feel repair work on these devices will become as common as having a muffler installed or a headlight replaced. The average driver will be more concerned about having his or her work done by a competent mechanic than he or she will about having the work completed by an auto dealer.

A strong performance warranty also benefits the consumer. Since a consumer is paying for an emission device which should reduce pollutants for the life of the car, he or she is entitled to get his or her money's worth. To me, buying a car with a pollution device which may stop functioning after 18 months is like buying a refrigerator with a defective freezer. We must guard against any measure which would take advantage of the consumer.

Another major issue which we are confronting concerns automobile emission standards. There have been many studies on the impact of emission standards on employment in the auto industry. And, unfortunately, they are difficult to compare. Some consider both emission standards and fuel efficiency. Others simply use formulas which are not analogous; for example, one study stresses the number of new jobs it would create while another study stresses the number of jobs it would eliminate in comparison to the number of industry jobs predicted for the future.

However, the emission control system changes have added no more than 10 percent to the yearly increase in car sticker prices during the past 8 years. Thus, I believe we can predict with a high degree of certainty that it is the economy and not this technology which will affect new sales in the future. And, we know that, regardless of which alternative strategy we follow to reduce the level of carbon monoxide, hydrocarbons and nitrogen oxide in our air, we will have a net increase in jobs. The question is not how many jobs will be lost but, rather, how many jobs will be created. And the new jobs will be created for people in the emission control industry as well.

I would not support any timetable for emission standards which I felt would severely disrupt the prospects of new jobs. And I do not believe that these amendments do so.

First of all, I believe that the automobile industry has available technology to avoid any major production disturbances even if it were necessary to reduce the level of nitrogen oxide to 1 by 1980. It is no secret that auto manufacturers were able to supply the necessary equipment to meet stringent emission standards in California after they were forced to do it. And, the new regulation has not shaken the industry even though California has over 14 million registered motor vehicles—nearly five times the number of vehicles in my own State of Massachusetts.

Volvo's three-way catalyst has demonstrated the ability of one auto manufacturer to meet strong emission standards. The three-way catalyst, which is being adopted by a number of American cars, uses a platinum-rhodium mechanism to render all three major automotive pollutants harmless. General Motors and the Ford Motor Co. have begun experimenting with sensor equipped catalysts already.

Furthermore, fuel efficiency will not be sacrificed by the use of this new technology. The most inefficient technology is the existing catalytic converter which would be retained if the amendments are weakened. According to a National Academy of Sciences study, a three-way catalyst would exact only a 2-percent fuel penalty at an increased 10-year lifetime cost of $266. And, according to a Department of Transportation-Environmental Protection Agency study, we could achieve a 40-percent improvement in fuel economy by combining new technologies with engine resizing and a shift to smaller cars. The combination of these factors would also cause a substantial reduction in the amount of carbon monoxide and hydrocarbons emitted by cars, but still leaves the issue of nitrogen oxide unresolved.

These reductions are imperative if we do not want to imperil the health of all Americans. Today, auto emissions account for 72 percent of the carbon monoxide, 41 percent of unburned hydrocarbons, and 35 percent of the nitrogen oxides in the Nation's air. And, according to the Federal Panel on Air Quality, Noise and Health, strong emission standards would result in over 11 million fewer additional attacks of lower respiratory disease in children then the less stringent timetable considered by the Senate.

We must insist upon new technology to reduce the risks to human health. I agree that the cost of maintaining antipollution devices may be high, but it is not so high as the price we would pay if we fail to employ such devices.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MUSKIE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 219 H.R. 6161.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6161) to amend the Clean Air Act and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. MUSKIE. Mr. President, I move that all after the enacting clause be stricken and that the language of S. 252 be substituted therefor.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maine.

The motion was agreed to.

Mr. MUSKIE. Mr. President, I ask unanimous consent that 500 copies of H.R. 6161 as passed by the Senate be printed for use by the Committee on Environment and Public Works and I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of Senate amendments to H.R. 6161.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I yield to my good friend from West Virginia.

Mr. RANDOLPH. Mr. President, I express the hope that we will not be delayed

in going to conference with the House. I hope that can be done next week. Of course, I am not attempting to set a date, but I know that those of us who have been interested in this subject matter, especially all members of the committee, Senator MUSKIE, and Senator STAFFORD, feel we should not allow this matter to be delayed.

I hope we can go to conference next week.

Mr. MUSKIE. I certainly will try to accommodate the chairman. I would agree with him on the desirability of that objective.

Mr. ROBERT C. BYRD. Mr. President, I will delay the Senate for only 30 seconds.

There will be a rollcall vote on final passage, but then there will be no more rollcall votes today.

The Senate will come in at 12:30 p.m. on Monday. The first order of business will be Calendar Order 152 (S. 1340), a bill to authorize appropriations to the Energy Research and Development Administration. There will be rollcall votes on Monday afternoon.

SEVERAL SENATORS. Vote! Vote!

Mr. MUSKIE. There are many provisions in this bill which are identical to last year's bill, or virtually so. The legislative history established for items such as delayed compliance penalties is made part of the record of these 1977 amendments by reference here. There is no need to reprint such discussions again in the RECORD this year—they remain applicable and binding.

ADDITIONAL STATEMENTS SUBMITTED

Mr. DOMENICI. Mr. President, the House amendments to the Clean Air Act (H.R. 6161) contain a provision—section III—that effectively requires all new coal-fired powerplants to meet the same percentage reduction of pollution removal on new powerplants regardless of the sulfur content of the coal burned. Any doubts on this matter are dispelled by explicit report language. This is not a logical approach in setting sulfur dioxide emission standards. Either a standard is valid or it is not valid. If the standard is valid, then there is no reason for the Government to specify the technique for complying with the standard, as long as compliance meets identifiable environmental goals. Technology for technology's sake can only be pursued if costs are ignored.

If the House bill prevails, it is very likely that nationwide sulfur dioxide pollution will remain the same or increase. This may be a surprising result to some. The National Journal Report—May 21, 1977, page 781—in an article entitled, "Converting to Coal—Can It Be Done Cleanly," reached the same conclusion. The author—J. Dicksen Kirschten—states that, "Even with scrubbers, however, higher sulfur coal will produce more sulfur dioxide air pollution than a lower sulfur fuel burned in the same unit". This situation is likely to occur because, in many instances, utilities that are planning to burn low sulfur coal without flue gas scrubbers, or with less scrubbing than required on high sulfur coal, will opt for high sulfur coal plus flue gas scrubbers due to the needless expense of scrubbing low sulfur coal to the same percentage of reduction than that required for high sulfur coal. Thus, the higher sulfur coal will be scrubbed down to requirements of EPA New Source Performance Standards—NSPS—or State imposed best available control requirements, while the low sulfur coal with less scrubbing would be, in many instances, well below the requirements of these EPA standards.

The cost to the consumer will greatly increase if all new coal-fired plants have to meet the same percentage reduction, regardless of sulfur content of the coal. It has been calculated that electricity-related costs to consumers will be increased by about $100 per household in the 1985 timeframe because of this provision. This adds up to about $8–10 billion annual increase in consumer electricity costs by 1985.

Sludge and the operational energy requirements are two other problems associated with scrubbers. Many hundreds of millions of tons of sludge will be generated in the next 20 years even if there is no requirement to scrub all coal to the same percentage of reduction in new powerplants. Disposal of this voluminous quantity of sludge is a significant problem, particularly in those areas of the country where there is a lack of suitable disposal sites. This problem will result in substantial increases in scrubber costs if sludge transportation is necessary.

Moreover, scrubbers need significant quantities of energy for operation. It is generally agreed that a scrubber uses 5 to 7 percent of the energy generated by a coal-fired plant. This means that for every 15 or 20 new plants constructed with flue gas scrubbers installed, one additional plant must be constructed to provide the equivalent amount of energy of those plants without scrubbers.

In summation, I consider any requirement that calls for the same percentage reduction of emissions regardless of the sulfur content of the fuels ill-advised. Not only may sulfur emissions rise and costs soar, but technological innovation will be stymied. Under an equal percentage of reduction scheme, a new cheap process for reducing the sulfur content of low sulfur coal that did not achieve exactly the same percentage reduction as that required of high sulfur coal would be barred. This is despite the fact such a process could be vastly cheaper, and also allow for significant reductions in sulfur emissions.

Rather than attempting to do too much, environmental policy should instead concentrate on reducing the release of air pollution into the atmosphere. Attempts to cancel out the natural advantages of inherently low sulfur fuels can only lead to economic and environmental folly.

I strongly urge the Senate conferees to vigorously support our language on best available control technology that incorporates the most sensible approach to developing a sulfur dioxide control strategy. Our language, section 110, leaves the decision on best available control technology to the States on a case-by-case basis.

The PRESIDING OFFICER (Mr. RIEGLE). The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from North Carolina (Mr. MORGAN), the Senator from Georgia (Mr. NUNN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. LONG) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. ANDERSON), the Senator from Arkansas (Mr. BUMPERS), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Vermont (Mr. LEAHY), the Senator from North Carolina (Mr. MORGAN), the Senator from Georgia (Mr. TALMADGE), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), the Senator from Oregon (Mr. HATFIELD), the Senator from Illinois (Mr. PERCY), the Senator from Texas (Mr. TOWER), the Senator from Wyoming (Mr. WALLOP), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Wyoming (Mr. WALLOP) would each vote "yea."

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Texas (Mr. TOWER).

If present and voting, the Senator from Oregon would vote "yea" and the Senator from Texas would vote "nay".

On this vote, the Senator from Connecticut (Mr. WEICKER) is paired with the Senator from Arizona (Mr. GOLDWATER).

If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Arizona would vote "nay."

The result was announced—yeas 73, nays 7, as follows:

[Rollcall Vote No. 190 Leg.]

YEAS—73

Abourezk	Bellmon	Byrd, Harry F., Jr.
Allen	Bentsen	Byrd, Robert C.
Baker	Biden	Cannon
Bartlett	Brooke	Case
Bayh	Burdick	

Chiles	Huddleston	Pell
Church	Humphrey	Proxmire
Clark	Inouye	Randolph
Cranston	Jackson	Riegle
Culver	Javits	Roth
Danforth	Kennedy	Sarbanes
DeConcini	Laxalt	Sasser
Dole	Lugar	Schmitt
Domenici	Magnuson	Schweiker
Eagleton	Mathias	Sparkman
Eastland	Matsunaga	Stafford
Ford	McClure	Stennis
Glenn	McIntyre	Stevens
Gravel	Melcher	Stevenson
Griffin	Metzenbaum	Stone
Hart	Moynihan	Thurmond
Haskell	Muskie	Williams
Hathaway	Nelson	Young
Heinz	Packwood	Zorinsky
Hollings	Pearson	

NAYS—7

Curtis	Hatch	Scott
Durkin	Hayakawa	
Garn	Helms	

NOT VOTING—20

Anderson	Leahy	Percy
Bumpers	Long	Ribicoff
Chafee	McClellan	Talmadge
Goldwater	McGovern	Tower
Hansen	Metcalf	Wallop
Hatfield	Morgan	Weicker
Johnston	Nunn	

So the bill (H.R. 6161), as amended, was passed, as follows:

SECTION 1. (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 determines that a reduction in expenditures 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.".

(b) Subsection (c) of section 105 of the Clean Air Act is amended by adding the following: "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.".

SEC. 2 Section 103 of the Clean Air Act is amended by adding the following new subsection:

"(g) GULF COAST AIR QUALITY.—There are authorized to be appropriated to the Administrator $5,000,000 beginning in fiscal year 1978 for a study of air quality in the Gulf Coast region, including analysis of liquid and solid aerosols and other fine particulate matter and the contribution of such substances to visibility and public health problems in the region. 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.".

SEC. 3. Section 107 of the Clean Air Act is amended by adding a new subsection as follows:

"(d)(1) For the purpose of transportation control planning, prevention of significant deterioration, and for other purposes, each State, within one hundred and twenty days after the date of enactment of the Clean Air 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 Amendments of 1977—

"(A) do not meet a national primary ambient air quality standard for any mobile source related air pollutant;

"(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 any pollutants other than those listed in subparagraph (A) of this paragraph through the application of measures or controls approved or promulgated pursuant to section 110 of this Act;

"(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 oxides or particulate matter, or for which there is not sufficient data to be classified under subparagraph (A) of this paragraph.

"(2) In determining regions or portions thereof in excess of the ambient air quality standards under subsections (1) (A), (B), and (C) of this subsection, such regions must be identified on the basis of statistically sound air quality sampling procedures in an effort to obtain results representative of the region as a whole, which to the extent practicable, within the time required, shall not rely on either a single measurement, or measurements from a single station.

"(3) 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 oxides or particulate matter within one hundred and eighty days after enactment of the Clean Air Amendments of 1977 shall be deemed to be a region classified under subparagraph (D) of paragraph (1) of this subsection.

"(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.

"(6) In classifying regions under this subsection, where adequate air quality information exists, the State, with the approval of the Administrator, may subdivide and reclassify regions down to any size that still allows for efficient and effective air quality management.".

SEC. 4. 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, air quality benefits, and environmental impact of the emission control technology".

SEC. 5. Section 108 of the Clean Air Act is amended by adding new subsections as follows:

"(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 one hundred and eighty days after the enactment of this subsection, and from time to time thereafter, publish guidelines on the basic program elements for the transportation planning process assisted under subsection (h) of section 110 of this Act. Such guidelines shall include information on—

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

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

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

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

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

"(f)(1) The Administrator shall publish and make available to appropriate Federal agencies, States, and air pollution control agencies, including agencies assisted under subsection (h) of section 110 of this Act, within six 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), (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 and new offstreet parking facilities;

"(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 differental 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

"(xviii) programs to reduce motor vehicle emissions which are caused by extreme cold start conditions; (B) information or 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 during any extension under subsection (h) of section 110 of this Act and during episodes for which an air pollution alert or emergency has been declared; (C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and (D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

"(2) In publishing such information the Administrator shall describe (A) the effectiveness of such processes, procedures, and methods; (B) factors related to the costs and benefits of such processes, procedures, and methods, in different situations; (C) transportation factors related to such processes, procedures, and methods; (D) the environmental, energy, and economic impact of such processes, procedures, and methods; and (E) his assessment of whether each such process, procedure, or method is reasonable for application to attain a primary ambient air quality standard.".

SEC. 6. (a) Section 110 of the Clean Air Act is amended by adding a new sentence at the end of paragraph (1) of subsection (a) as follows "Each State shall adopt and submit to the Administrator within eight months after the date of enactment of the Clean Air Amendments of 1977, a revision of its implementation plan which provides for implementation, maintenance and enforcement of the provisions of subsection (g) of this section for the prevention of significant deterioration in each appropriate air quality control region (or portion thereof) within such State.".

(b) Section 110(a)(2)(B) of the Clean Air Act is amended to read as follows:

"(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and, in addition, as may be necessary, (i) to assure attainment and maintenance of such primary or secondary standard, such other measures, including, but not limited to, transportation controls, and enforceable supplemental emission reduction strategies for existing nonferrous smelters: *Provided*, That existing nonferrous smelters in operation on or before January 1, 1910, which have no continuous sulfur emission controls may be authorized on a case-by-case basis to employ enforceable intermittent emission reduction strategies for not more than two periods not to exceed five years each where the Administrator finds pursuant to section 314(e) that each such extension is essential to avoid cessation of smelter operations, and (ii) land-use controls for the purpose of maintenance of, or to prevent further deterioration from, any primary ambient air quality standard: *Provided, however*, That land-use controls shall be included in an implementation plan only after consideration of the energy, environmental, and economic impacts of such controls;".

(c) Section 110(a)(2)(D) of the Clean Air 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 or equivalent program for any major emitting facility, within such region to assure (i) that national ambient air quality standards are achieved and maintained, (ii) that the requirements of subsection (g) of this section are met, and (iii)".

(d) Section 110(a)(2)(H) of the Clean Air Act is amended by striking "or" before "(ii)" and by striking the period and adding at the end thereof: ", or to incorporate the requirements of subsection (g) of this section; or (iii) to incorporate any additional requirements established under the Clean Air Amendments of 1977.".

(e) Section 110(a)(4) of the Clean Air Act is amended by inserting after "primary or secondary standard" the following: "or which will not comply with a standard of performance under section 111, or which does not conform to the requirements of subsection (g) of this section,".

(f) Section 110(d) of the Clean Air Act is amended by striking the period and inserting at the end thereof "and the requirements of subsection (g) of this section.".

(g) Section 110 of the Clean Air Act is amended by adding the following new subsection:

"(k) 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 emission reduction strategy meeting the requirements of section 110(a)(2)(B), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such strategies.".

SEC. 7. Section 110 of the Clean Air Act is amended by adding a new subsection as follows:

"(g)(1) Each implementation plan shall include requirements applicable to each region identified in the list promulgated pursuant to paragraph (1)(D) of subsection (d) of section 107 of this Act, which shall, in addition to the requirements of paragraphs (2), (3), (4), (5), and (6) of this subsection, provide:

"(A) for designation as class I areas of—

"(i) all international parks, and each national wilderness area, and national memorial park which exceeds five thousand acres in size, and each national park which exceeds six thousand acres in size and which is in existence on the date of enactment of the Clean Air Amendments of 1977;

"(ii) such other areas as the State (and, if appropriate, after notice and consultation with adjacent States) may designate, except that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be so designated only by the appropriate Indian governing body, which body shall be subject in all respects to the provisions of pargraph (10) of this subsection.

"(B) that all remaining areas in such State identified under section 107(d)(1)(D) of this Act and not designated class I pursuant to subparagraph (A) of this paragraph shall be designated as class II areas, except that those areas which shall have been previously designated class I under prior regulations shall not become class II as a result of this provision.

"(2) As it relates to the pollutants particulate matter and sulfur dioxide, the cumulative change in the air quality in any area designated under paragraph (1) of this subsection resulting from the construction and operation of any new major emitting facility or facilities shall be limited to the following projected increases in pollutant concentrations over the baseline air quality concentration:

"Pollutant	(*In micrograms per cubic meter*)
Particulate matter:	
Annual geometric mean	10
Twenty-four-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	15
Twenty-four-hour maximum	100
Three-hour maximum	700

"(3) Requirements applicable to an area designated as class I or class II shall include a management program to assure that, in the event of the proposed construction of any major emitting facility in any such area, the construction of such facility shall be preceded by an analysis of the ambient air quality, climate and meteorology, soils and vegetation, and visibility at the site of the proposed facility and in the area potentially affected by the emissions from the proposed facility for each pollutant regulated under this Act which will be emitted from, or which results from the construction or operation of, such facility. Such analysis shall be included in any permit application required.

"(4) No major emitting facility on which construction is commenced after June 1, 1975, may be constructed in any area designated under this subsection—

"(A) unless a permit has been issued for such proposed facility in accordance with this section, setting forth emission limitations for such facility which conform to the requirements of this subsection,

"(B) unless 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,

"(C) unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not contribute to a cumulative change in the air quality in excess of that allowed in paragraph (2) of this subsection, except 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 Amendments of 1977, whose actual allowable emissions of air pollutants after compliance with subparagraph (B) of this paragraph will be less than fifty tons per year, for which the owner or operator of such facility shall demonstrate 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,

"(D) unless the provisions of paragraph (5) of this subsection with respect to protection of class I areas have been complied with for such facility,

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

"(F) unless there has been opportunity for a public hearing conducted by a State on any proposed permit for such facility, with an opportunity for interested parties, includto appear and provide testimony on such ing representatives of the Administrator, facility, including alternatives thereto, and control technology requirements.

"(5)(A) The State shall provide notice of any permit application to the Administrator and 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 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) 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 contribute to a cumulative change in air quality in excess of the following projected increases in pollutant concentrations over the baseline air quality concentration:

"Pollutant	(*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

Provided, That (i) 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 of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not exceed for such lands the limitations on projected increases established in this subparagraph, a permit shall not be issued, and (ii) 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, notwithstanding the fact that the change in air quality resulting from emissions from such facility will exceed for such lands the limitations on projected increases established in this subparagraph, the State may issue a permit.

"(6) For purposes of this subsection—

"(A) the term 'best available control technology' means an emission limitation based on the maximum degree of reduction 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;

"(B) the term 'Federal Land Manager' means (i) the Secretary of the department with authority over any lands of the United States, and (ii) Indian tribes which have legal jurisdiction over tribal lands; and

"(C) 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: *Provided*, That 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 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 Amendments of 1977.

"(D) the term 'necessary preconstruction approvals or permits' means those permits or approvals, if any, required as a precondition to undertaking any activity relied upon by an owner or operator to satisfy the requirements in clauses (i) or (ii) of subparagraph (C) of this paragraph.

"(7)(A) Until a revision of the implementation plan in accordance with this subsection is submitted and approved, significant deterioration for those pollutants covered by such regulations shall be regulated pursuant to applicable regulations and procedures for prevention of significant deterioration established under authority of the Clean Air Act in effect prior to the enactment of the Clean Air Amendments of 1977, except as those regulations provide for designations of nondeterioration areas which allow increases in emissions of air pollutants or any reduction in air quality inconsistent with paragraphs (1) and (2) of this subsection, or do not require the degree of control required by paragraph (6)(A) of this subsection, or are otherwise inconsistent with the requirements of this subsection.

"(B) For the purpose of this section any State may submit the revision to its implementation plan relating to the prevention of significant deterioration which has been adopted for such State as of the date of enactment of the Clean Air Amendments of 1977. Such requirements shall be the requirements applicable to such State under this section unless the Administrator finds that such requirements or a portion thereof are consistent with the requirements of this subsection and notifies the State of such inconsistency.

"(8) The Administrator shall study strategies to control pollutants not covered by paragraph (2) of this subsection in order to prevent significant deterioration of air quality for such pollutants and shall report to the Congress within one year after the date of enactment of the Clean Air Amendments of 1977 recommending control strategies for such pollutants. Such report shall recommend increments, as appropriate, for class I and class II areas applicable to the emissions from stationary sources of nitrogen oxides, hydrocarbons, and such other pollutants and control strategies as the Administrator determines to be appropriate.

"(9) The Administrator shall, and a Governor may, take such measures under section 113 or 304 of this Act, including seeking injunctive relief, as necessary to present the issuance of a permit under this subsection or the construction of a major emitting facility which does not conform to the requirements of paragraphs (4) and (5) of this subsection.

"(10) In the event any State adjacent to a State subject to the requirements of this subsection or Indian tribes within such State disagrees with the designation of any class I area in the State subject to the requirements, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in an adjoining State which the Governor of the affected State or ruling body determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this subsection in any class I or class II area within the affected State or tribal reservation, the Governor or 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.

"(11) Notwithstanding paragraphs (2), (4), and (5) of this subsection, in no instance shall the Administrator approve any requirements or revision of any implementation plan, nor shall any permitting authority issue a permit under this subsection for a new major emitting facility, which would allow for the deterioration of air quality to a level that would exceed any national ambient air quality standard.

"(12) Nothing in this subsection shall alter or affect section 116 of this Act.".

SEC. 8. (a) Section 110 of the Clean Air Act is amended by adding subsection (h) as follows:

"(h)(1) Each State shall submit an implementation plan revision in accordance with this section for any air quality control region in which the national primary ambient air quality standards or oxidants and carbon monoxide will not be attained by July 1, 1979.

"(2) An implementation plan revision under this subsection, or one for any area where the Administrator prior to enactment of the Clean Air Act Amendments of 1977 has found an implementation plan substantially inadequate to attain or maintain the national primary ambient air quality standards for oxidants or carbon monoxide and has called for a revision under section 110(a)(2)(H)(ii), shall be submitted no later than January 1, 1979. Such revised plan shall comply with the requirements of subsection (a)(3)(A)(iii) of this section, and shall at a minimum:

"(A) identify the remaining emission reductions necessary for attainment of the national primary ambient air quality standards and the additional reasonably available measures to be implemented to accomplish these reductions;

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

"(C) identify the financial and manpower resources to be committed to carrying out the plan;

"(D) 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;

"(E) demonstrate (i) attainment of the national primary ambient air quality standards as expeditiously as practible, but no later than July 1, 1982, or (ii) demonstrate that such attainment is not possible within the period prior to July 1, 1982, despite the implementation of all reasonably available control measures; and

"(F) for those plans which make a demonstration pursuant to subparagraph (E)(ii) of this paragraph as a part of the plan revision required to be submitted by Januray 1, 1979—

"(i) require achievement of emission reductions from existing sources in the region so that the total allowable emissions from existing sources (including new sources which are not major emitting facilities) and from any proposed new or modified major emitting facility will be sufficiently less than the total allowable emissions from such existing sources under the implementation plan prior to the application for a permit for construction of any new or modified facility so as to assure attainment of the applicable national ambient air quality standard not later than July 1, 1987, and maintenance thereafter;

"(ii) 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 social costs imposed as a result of its location, construction, or modification;

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

"(iv) identify other measures necessary to provide for attainment of the applicable national ambient air quality standard not later than July 1, 1987.

"(3) Each State which makes a demonstration pursuant to subparagraph (E)(ii) of paragraph (2) shall, not later than July 1, 1982, submit a revised implementation plan which contains enforceable measures necessary to assure attainment of the applicable national ambient air quality standard not later than July 1, 1987.

"(4) An implementation plan revision shall evidence public and local governmental involvement in accordance with paragraph (6) of this subsection and subsection (i) of this section, and include (i) a description of projects to be undertaken together with timetables and resource requirements, and (ii) identification and analysis of social, economic, and environmental effects including public health and energy conservation effects of such measures and projects.

"(5) The Administrator may delegate the implementation or enforcement of any portion of a promulgated plan to one or more general purpose local governments or a State.

"(6)(A) Within six months after the enactment of the Clean Air Amendments of 1977, for each region subject to this subsection 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 subsection 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 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.

"(B) The preparation of the implementation plan required by this subsection 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 this section, and such planning processes shall take into account the requirements of this subsection.

"(7)(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 paragraph (6) of this subsection for payment of the reasonable costs of developing an air quality transportation control plan under this section.

"(B) The amount granted to any organization under subparagraph (A) of this paragraph shall be 100 per centum of any additional costs of developing an air quality transportation control plan under this section 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 paragraph shall not be used for construction.

"(8)(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 (i) in which any primary ambient air quality standard has not been attained, (ii) where transportation control measures are necessary for the attainment of such standard and (iii) where the Administrator finds after January 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by paragraph (2) of this subsection or that reasonable efforts toward submitting such an implementation plan are not being made (or, in the case of a revised implementation plan required by paragraph (3) of this subsection, after 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 this section, including any requirement for a revised implementation plan under paragraph (2) of this subsection, the Administrator shall not make any grants under this Act.

"(9)(A) No department, agency, or instrumentality of the Federal Government shall (i) engage in, (ii) support in any way or provide financial assistance for, (iii) license or permit, or (iv) approve, any activity which does not conform to a plan after it has been approved or promulgated under this section. 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 this section. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

"(B) 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, as amended, title 23 of the United States Code, and the Housing and Urban Development Act, as amended.".

(b) Section 110 of the Clean Air Act is amended by adding a new subsection as follows:

"(i) In carrying out the requirements of subsections (a)(2)(B)(i) and (ii), (g), and (h) of this section and subsections (d) and (g) of section 113, the State shall provide a satisfactory process of consultation with general purpose local governments and designated organizations of elected officials of local governments, 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 four months after the date of enactment of the Clean Air Amendments of 1977. The Administrator may disapprove any portion of a plan relating to any measure described in the first sentence of this subsection or to the consultation process required under this subsection if he determines that such plan does not meet the requirements of this subsection. 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 review of such action on the basis of a violation of the requirements of this subsection.".

SEC. 9. (a) Section 110(a)(2)(E) of the Clean Air 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 prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other State to prevent significant deterioration of air quality, or endanger the health or welfare of the citizens of any other State, and (ii) insuring compliance with the requirements of subsection (j) of this section;".

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

"(j)(1) Each applicable implementation plan shall—

"(A) require for each major proposed new (or modified) source subject to subsection (g) of this section or 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), 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

"(B) identify all major existing stationary sources which may have the impact described in subparagraph (A) of this paragraph 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.

"(2) Any State or political subdivision may petition the Administrator for a finding that any major source emits or would emit any air pollution in violation of the prohibition of subsection (a)(2)(E)(i) of this section. Within sixty days after receipt of any petition under this paragraph and after public hearing, the Administrator shall make such a finding or deny the petition. Failure to make such a finding or to deny the petition within the time prescribed herein shall be deemed to be the making of such a finding.

"(3) 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 (A) for any major proposed new (or modified) source with respect to which a finding has been made under paragraph (2) of this subsection to be constructed or to operate in violation of the prohibition of subsection (a)(2)(E)(i) of this section, or (B) for any major existing source to operate more than three months after such finding has been made with respect to it, except that the Administrator may permit the continued operation of such source 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 requirement contained in subsection (a)(2)(E)(i) of this section as expeditiously as practicable, but in no case later than three years after the date of such finding.".

SEC. 10. (a) Section 111 of the Clean Air Act, is amended by inserting after subsection (e) the following new subsection:

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

"(i) the proposed system has not been adequately demonstrated,

"(ii) there is a substantial likelihood that the proposed technological system 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 significantly lower cost in terms of energy, economic, or non-air quality environmental impact,

"(iii) the proposed technological system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

"(iv) no previous determination of failure has been made with respect to such proposed technological system under subparagraph (D)(ii).

In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider information supplied by the applicant and other information whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any pollutants which is not subject to any regulation under this Act; 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 pollutant which is not subject to any regulation under this Act from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without the use of such system.

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

"(i) emissions from the source will not interfere with 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.

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

"(i) a date (not more than three years after the date on which the waiver is granted) 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 technological 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)(ii),

and that such failure cannot be corrected.

"(2)(A) If a waiver for any source under paragraph (1) is terminated under clause (ii) of paragraph (1)(C), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under subsection (b) of this section. Such period shall not extend beyond the date three years from the time a waiver granted under paragraph (1) is terminated.

"(B) An extension granted under this paragraph shall set forth emission limits and compliance schedules containing increments of progress which require compliance with applicable standard 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.".

(b) Section 111 of such Act is further amended by adding an additional new subsection as follows:

"(g) 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 2,500,000 bushels.".

SEC. 11. The Clean Air Act is amended by adding a new subsection (e) to section 112 as follows:

"(e) For purposes of this section the Administrator may promulgate a hazardous emission standard in terms of a design, equipment, or operational standard if he determines that such standard is necessary to control emissions of a hazardous pollutant or pollutants because, in the judgment of the Administrator, they cannot or should not be emitted through a conveyance designed and constructed to emit or capture such pollutants.".

SEC. 12. (a) Section 113 of the Clean Air Act is amended by adding the following new subsection:

"(d)(1) A State (or, after thirty days notice to the State, the Administrator) may issue an enforcement order for any stationary source which specifies a date for final compliance with an applicable emission limitation later than the date for attainment of any national ambient air quality standard specified in the applicable implementation plan: *Provided*, That (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: (B) the order contains a schedule and timetable for compliance; (C) the order contains any interim control measures the State (or the Administrator) deems to be reasonable, and the order requires the emission monitoring and reporting by the source authorized to be required under sections 110(a)(2)(F) and 114(a)(1); (D) the order provides for final compliance with the emission limitation in the applicable implementation plan as expeditiously as practicable, but in no event later than July 1, 1979; and (E) in the case of a major emitting facility, the order provides that it will be amended no later than July 1, 1978, to contain a provision requiring the source to pay monthly a delayed compliance penalty, in an amount equal to that sum established by the Administrator pursuant to section 120 of this Act, in the event such major emitting facility fails to comply by July 1, 1979.

"(2) An enforcement order proposed by a State shall issue under this subsection unless the Administrator, within ninety days of receipt of any proposed order, objects in writing to the issuance of such order as not consistent with the requirements of paragraph (1) of this subsection. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with 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 an emission limitation in 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 such issuance, 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.

"(4) In the case of a major emitting facility which proposes to comply with an applicable emission limitation through replacing existing production capacity with an inno-

vative production process which will result in an emission reduction significantly greater than required by the emission limitation applicable to such facility, or with the installation of an innovative control technique that has a substantial likelihood for enabling the source to comply with the applicable emission limitation by achieving a significantly greater emission reduction than that required by the applicable emission limitation, or by achieving the required reduction with an innovative system that will have potential for industry-wide applicaion at a significantly lower cost than the systems which have been determined by the Administrator to be adequately demonstrated, the date required for compliance applicable to such facility under paragraphs (1) and (3) of this subsection and section 120 of this Act shall be July 1, 1981.

"(5)(A) In the case of a major emitting facility which—

"(i) is ordered to convert to coal under an order pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974, or

"(ii) within one year after enactment of the Clean Air 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 an applicable emission limitation under an implementation plan, an enforcement order may be issued under paragraph (1) of this subsection for such facility which specifies a date for final compliance with the applicable emission limitation later than the date for attainment of any national ambient air quality standard specified in the applicable implementation plan: *Provided*, That the order provides for final compliance with the emission limitation in the applicable implementation plan as expeditiously as practicable, but in no event later than three years after the date of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or three years after giving notice under clause (ii) of this subparagraph, which date shall be the date required for compliance applicable to such facility under paragraphs (1) and (3) of this subsection and section 120 of this Act and in no event shall be later than December 31, 1980.

"(B) In issuing an order under this paragraph, the State 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 facility to which such an order applies. Such limitations, requirements, and measures shall be those which the State determines must be complied with by the facility 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 of the Federal Energy Administration 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 and the Administrator, 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 Amendments of 1977.

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

"(7)(A) During the period of the enforcement order issued under this subsection and where the owner or operator is in compliance with the terms of such enforcement 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 emission limitation for the source covered by such order.

"(B) The failure of any source subject to an enforcement order under this subsection to adhere to the schedule and timetable of compliance established under this subsection during the period of the order, shall make such source subject to the provisions of subsections (a), (b), and (c) of this section.

"(8) No extension, postponement, waiver, or delay of any requirement of an implementation plan applicable to a major emitting facility shall be granted except in accordance with this subsection or section 110 (f) of this Act: *Provided, however*, That neither this subsection nor section 120 of this Act shall be construed as limiting the authority of any State to revise any deadline for attainment of a national secondary ambient air quality standard.

"(9) Any actions of the Administrator pursuant to this subsection, including any objection under paragraph (2) of this subsection, shall be considered a final action for purposes of section 307 of this Act.

"(10) 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 Amendments of 1977 shall remain in effect to the extent that such order or consent decree is not inconsistent with the requirements of this subsection and section 120 of this Act or (B) the administrative order on consent issued by the Administrator on April 1, 1976, requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 11. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond July 1, 1979, exceptance administrative order on consent, is void unless modified to comply with the requirements of this subsection.".

(b) The Clean Air Act is amended by adding a new section 120 as follows:

"DELAYED COMPLIANCE PENALTY

"SEC. 120. (a) Prior to July 1, 1978, any enforcement order issued under subsection (d) of section 113 of this Act shall be amended to include a delayed compliance penalty established pursuant to this section which shall be imposed automatically and payable monthly for any major emitting facility which for any reason not entirely beyond the control of the owner or operator is not in compliance with an applicable emission limitation on July 1, 1979.

"(b) As an enforceable interim step under any enforcement order issued under section 113(d) of this Act, the owner or operator of any major emitting facility not in compliance with an applicable emission limitation, for which such order specifies a date for compliance after July 1, 1978, shall, prior to October 1, 1977, furnish to the State (with a copy to the Administrator) information containing a detailed description of the control technology or system proposed to achieve compliance with the applicable emission limitation and the estimated cost of compliance, including capital costs debt service costs, the estimated schedule of expenditures to comply with such limitation or requirement by July 1, 1979, and the estimated annual costs of operation and maintenance of any technology or system required in order to maintain such compliance, together with such information as the State (or the Administrator) may require on the economic value which a delay in compliance beyond July 1, 1979, may have for the owner or operator of such facility.

"(c)(1) A notice of receipt of information pursuant to subsection (b) of this section shall be published in the newspapers in general circulation in such State, and such notice shall set forth where copies of the information are available for inspection and, for a reasonable charge, copying.

"(2)(A) Within sixty days following the date of publication of the notice issued under paragraph (1) of this subsection there shall be published in the newspapers in general circulation in such State (and, as appropriate, the Federal Register or any publication required as part of any rulemaking activity in such State) the proposed delayed compliance penalty applicable to the major emitting facility, with an announcement of an opportunity for a public hearing on such action.

"(B) Such proposed delayed compliance penalty under subparagraph (A) of this paragraph, determined in accordance with guidelines published by the Administrator, shall be a monthly payment in an amount no less than the monthly 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 the economic value which a delay in compliance beyond July 1, 1979, may have for the owner or operator of such major emitting facility.

"(C) The State shall take final action establishing such delayed compliance penalty within sixty days after the date of publication of the proposed penalty under subparagraph (A) of this paragraph.

"(d)(1) 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 subsection (c)(2)(A) of 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.

"(2) If the Administrator objects under this subsection, he shall immediately establish a substitute delayed compliance penalty applicable to such facility.

"(e)(1) In the event an owner or operator contests the delayed compliance penalty established under this section, the owner or operator may within sixty days seek review of such penalty in the appropriate United States district court.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, in no event shall any challenge or review taken under this subsection operate to stay or otherwise delay the obligation of a facility not in compliance with an applicable emission limitation to commence monthly payment of the delayed compliance penalty as determined by the State (or the Administrator) on July 1, 1979, pending the outcome of any such review.

"(B) In any challenge of the imposition of the penalty based on an allegation that the failure to comply by July 1, 1979, was due to reasons entirely beyond the control of the owner or operator, the obligation to commence monthly payment of the delayed com-

pliance penalty may be stayed pending the outcome of such challenge: *Provided*, That as a condition of such stay, the owner or operator of such source shall post a bond or other surety in an amount equal to the potential liability for such penalty during the period of the stay.

"(3) If an owner or operator is successful in any challenge or review proceedings under this subsection, the court may award such relief as necessary, including cancellation of the bond, rebate of any payments, or adjustment of the amount of payments required by the order.

"(f) In any case where a State does not have sufficient authority to issue a delayed compliance penalty, the Administrator after thirty days notice to the State shall establish, implement, and enforce such penalty.

"(g) Failure to make any payment required by an order under this section and section 113(d) of this Act or to submit information required under this section shall, in addition to liability for such payments, subject the owner or operator of a major emitting facility operating pursuant to an enforcement order issued under section 113 (d) of this Act to a penalty under subsection (e) of section 113 of this Act.

"(h) Any actions pursuant to this section, including any objection of the Administrator under subsection (d)(1) of this section, shall be considered a final action for purposes of section 307 of this Act.

"(i) Any enforcement 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 effect any civil or criminal enforcement proceedings brought under any provision of this Act or State or local law.

"(j) In the case of an emission limitation approved or promulgated by the Administrator after the enactment of the Clean Air Amendments of 1977 which is more stringent than the emission limitation for the source under the applicable implementation plan in effect prior to such approval or promulgation, if any, or where there was no emission limitation approved or promulgated before enactment of the Clean Air Amendments of 1977, the date for imposition of the delayed compliance penalty under subsection (a) of this section, and for purposes of subsections (b), (c)(2)(B), and (e) of this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with the emission limitation, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation.".

SEC. 13. The Clean Act is amended:

(a) By amending subsection (b) of section 113 to read as follows:

"(b) The Administrator shall commence a civil action for appropriate relief, including a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $10,000 per day of violation or both, whenever any person—

"(1) violates or fails or refuses to comply with any order issued under subsection (a) or (a) of this section; or

"(2) violates any requirement of an applicable implementation plan (A) during any period of federally assumed enforcement, or (B) more than thirty days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

"(3) violates section 111(e), 112(c), 119 (g), 120(b), or 120(g); or

"(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection shall be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, and assess such penalty. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.".

(b) By amending subsection (c) of section 113—

(1) to amend paragraph (1)(B) to read as follows:

"(B) violates or fails or refuses to comply with any order under subsection (a) or (d) of this section, or"; and

(2) to add a new paragraph (3) as follows:

"(3) For the purpose of this subsection, the term 'person' shall mean, in addition to the definition contained in section 302(e) of this Act, any responsible corporate officer.".

(c) By adding the following new subsections to section 113:

"(e) In any case where a person is in knowing violation of a provision of an implementation plan applicable to a stationary source, where there has been no request for an enforcement order extending the date of compliance concerning such source filed pursuant to subsection (d) of this section within one hundred and eighty days after enactment of the Clean Air Amendments of 1977 (unless such an order has been issued under this section without any such request), or where a person is in violation of the requirements of subsection (b) or (g) of section 120 of this Act, such person shall be punished by a fine or not more than $25,000 per day of violation.

"(f) If it is alleged that interference with the achievement or maintenance of any national primary or secondary ambient air quality standard will result from any major emitting facility in any region of a State other than the State in which the facility is or may be located, the Administrator, at the request of the Governor of such other State, shall review the operation or proposed operation of such facility and, if necessary to prevent interference with the achievement or maintenance of any national primary or secondary ambient air quality standard in such other State, he shall take such measures, including seeking injunctive relief, as necessary to prevent such interference.".

SEC. 13. (a) Section 113 of the Clean Air Act is amended by adding the following new subsection:

"(g)(1) No major emitting facility shall be constructed or modified in any air quality control region or portion thereof in which any national ambient air quality standard is exceeded, if such facility will emit air pollutants subject to such standard so as to prevent the attainment or maintenance of such standard, unless as of the time of application for a permit for such construction or modification the State in which such facility is to be located (i) by July 1, 1979, has an approved or promulgated revised implementation plan and is in compliance with the requirements of such plan, which provides for attainment and maintenance of the applicable standard within three years of such approval or promulgation, pursuant to section 110(a)(3)(A) of this Act, or (ii) has demonstrated in a revised implementation plan submitted by January 1, 1979, that attainment and maintenance of the applicable standard within three years after approval of such plan is not achievable and such State is in compliance with all applicable requirements of section 110 (a)(3) and (h); except that prior to July 1, 1979, a permit may be issued for a facility proposed for construction or modification in such region if the owner or operator of such facility demonstrates to the satisfaction of the State that (A) the proposed facility will comply with the lowest achievable emission rate applicable to such proposed facility, before the proposed facility begins construction, (B) all existing sources owned or controlled by the owner or operator of the proposed facility in the same air quality control region as the proposed facility either are in compliance with all applicable emission limitations or are in compliance with an approved schedule and timetable for compliance under a provision of an applicable implementation plan under section 110 of this Act or an enforcement order issued under section 113(d) of this Act, (C) the total cumulative emissions from the existing sources in the region and the proposed facilities will at no time increase, and (D) the total allowable emissions from all existing and proposed sources in the region will be sufficiently less than the total allowable emissions from the existing sources under the implementation plan or an approved schedule and timetable for compliance applicable prior to the request to construct or modify so as to represent reasonable further progress toward attainment of the applicable national ambient air quality standard, taking into account progress already made.

"(2) The provisions of this subsection shall not be available where a State has not made any appropriate revision in the applicable implementation plan to include the emission limitations established under paragraph (1)(D) of this subsection.

"(3) The Administrator shall waive the requirements of section 110(a)(3)(A)(iii)(aa), section 110(h)(2)(F)(i), and paragraph (1)(C) and (D) of this subsection with respect to demonstration of reductions of emissions from existing sources to offset increases in emissions from new sources if he determines that the State has (A) an inventory of emissions of the applicable pollutant for each region identified pursuant to section 107(d) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met; (B) an enforceable permit program which requires emission limits for new and existing sources at least as stringent as required by this section and section 110(a)(3); and (C) a program which requires annual reductions in total allowable emissions in the region so as to provide for attainment of the applicable standard within the time required. The Administrator shall terminate such waiver if in his judgment at the end of any year the incremental reduction in emissions actually attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C) of this paragraph, 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 paragraph.".

(b) Section 110(a)(3)(A) of the Clean Air Act is amended to read as follows:

"(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that—

"(i) it meets the requirements of paragraph (2) and subsection (h), as appropriate;

"(ii) it has been adopted by the State after reasonable notice and public hearings; and

"(iii) in the case of any plan revision for a region identified pursuant to section 107(d) in which a primary standard will not be attained or may not be maintained by July 1, 1979, it requires (aa) achievement of emission reductions from existing sources in the region so that the total allowable emissions from existing sources (including new sources which are not major emitting facilities) and from any proposed new or modified major emitting facility will be sufficiently less than the total allowable emissions from such existing sources under the implementation plan prior to the application for a permit for construction of any new or modified facility so as to assure attainment of the applicable national ambient air quality standard within three years of such approval, and mainte-

nance thereafter; (bb) achievement of reduction in emissions from existing sources in the region requiring at a minimum the adoption of reasonably available control technology or measures on a specified schedule to attain or maintain the applicable standard; and (cc) each new or modified major emitting facility to comply with emission limitations based on the lowest achievable emission rate applicable to such facility.".

SEC. 15. Section 115 of the Clean Air Act is amended to read as follows:

"SEC. 115. (a) Whenever the Administrator, upon receipt of requests, 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 endanger the health or welfare of persons in a foreign country, or whenever the Secretary of State requests him to do so with respect to such pollutant or pollutants which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to such Governor of the State in which such emissions originate.

"(2) The notice of the Administrator shall operate as finding under clause (ii) of subparagraph (H) of subsection (a)(2) of section 110 of this Act and any foreign country adversely affected by the emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

"(c) This section shall apply 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 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. However, the Administrator, after consultation with all agencies which were party to the conference, may rescind any such recommendation on grounds of obsolescence.".

SEC. 16. Section 117 of the Clean Air Act is amended—

(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.

SEC. 17. (a) Section 118 of the Clean Air Act is amended by striking in the first sentence thereof the words "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 the words "be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of air pollution in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States nor any agent, employee, nor officer thereof shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief.".

(b) Section 118 of the Clean Air 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.".

SEC. 18. (a)(1) Section 119 of the Clean Air Act, as amended, is hereby repealed. All references to section 119 or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319) 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 shall be given instead by the appropriate State.

(2) In the case of any major emitting facility 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, the State shall certify the date which it determines is the earliest date that such facility will be able to comply with all such requirements. In the case of any plant or installation which the State determines (after consultation with the Administrator of the Environmental Protection Agency) 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, the State shall certify the date which it 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 under this subsection may be provided in an enforcement order under section 113(d) of the Clean Air Act.

(b) Section 111(a) of the Clean Air Act, as amended, is amended by adding the following new paragraph:

"(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 (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.".

"SEC. 19. Title I of the Clean Air Act is amended by adding after section 120 (as added by section 11 of this Act) the following new sections:

"ASSURANCE OF ADEQUACY OF STATE PLANS

"SEC. 121. (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.

"(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

"SEC. 122. (a) After notice and opportunity for a public hearing—

"(1) the Governor of any State,

"(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 of coal or coal derivatives other than locally or regionally available coal or coal derivatives by any source referred to in subsection (d) to comply with the requirements of a State implementation plan.

"(b) Upon a determination under subsection (a) the President (or his designee) by rule or order may prohibit any 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.

"(c) The President (or his designee) under subsection (b) 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 locally or regionally available coal or coal derivatives,

"(2) enter into contracts to acquire any additional means of emission limitation which the President or his designee determines may be necessary to comply with the requirements of this Act while using such 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 major fuel burning stationary sources which are not in compliance with the requirements of an applicable implementation plan or which

have been 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 President or his designee 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 this Act.

"(f) For purposes of any plan (or portion thereof) promulgated under this title, any rule or order under this section shall be treated as a part of such plan.

"(g) For the purpose of this section—

"(1) The term 'locally or regionally available coal or coal derivatives' means coal or coal derivatives which is, or can be mined or produced in the local or regional area (as determined by the President or designee) in which the major fuel burning stationary source is located.

"(2) The term 'major fuel burning stationary source' means any fossil fired stationary source with design capacity to produce 250,000,000 B.t.u./hr. (or its equivalent as determined by rule of the Administrator).".

SEC. 20. (a) Title I of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART B—OZONE PROTECTION

"PURPOSES

"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 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

"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 authority under existing law, to regulate certain substances, practices, processes, and activities which may affect the ozone in the stratosphere.

"DEFINITIONS

"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.

"ENVIRONMENTAL PROTECTION AGENCY

"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 Administrator 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 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 carying 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 October 1, 1977.

"(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 December 1, 1977, 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.

"(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.

"(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.

"(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 October 1, 1977, 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.

"RESEARCH AND MONITORING BY OTHER AGENCIES

"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 October 1, 1977, 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).

"(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 October 1, 1977, and biennially thereafter to the Administrator and the Congress on the results of the programs authorized in this paragraph, together with any appropriate recommendations for legislation or regulation (or both).

"(c) The Director of the National Science Foundation shall encourage and support on-

going 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 October 1, 1977, 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).

"(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 October 1, 1977, and biennially thereafter to the Admiinstrator and the Congress on the results of such programs together with any appropriate recommendations for legislation or regulation (or both).

"(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 October 1, 1977, 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).

"(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 report to the Congress by October 1, 1977, and 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 authority. The report 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.

"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.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 157. For the purpose of carrying out the provisions of this part, there are authorized to be appropriated—

"(i) 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;

"(ii) to the Environmental Protection Agency, $15,000,000 for fiscal year 1978; and

"(iii) to all other agencies such sums as may be necessary.".

(b) Title I of the Clean Air Act is amended by inserting immediately before section 101 the following:

"PART A—AIR QUALITY AND EMISSION LIMITATIONS".

(c) Subparagraph (B) of paragraph (2) of section 3 of the Toxic Substances Control Act is amended by adding the following clause:

"(vii) any halocarbon and other propellant for pressurized dispensing containers to the extent regulated under the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide and Rodenticide Act.".

SEC. 21. (a) Section 202(a) of the Clean Air Act is amended by adding a new paragraph (3) as follows:

"(3) The regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, particulates, and oxides of nitrogen from heavy duty trucks, buses, and motorcycles and engines thereof manufactured in model years (A) 1979 and 1980 (and, if appropriate in the judgment of the Administrator, 1978) shall contain standards which require a reduction of emissions of such pollutants established by the application of the best available control technology, taking into account the cost of compliance, as determined by the Administrator, and (B) 1981 and thereafter shall contain standards requiring a reduction of emissions of such pollutants equivalent to the levels required by the standards established under subsection (b) of this section, except that for heavy duty motor vehicles over 10,000 pounds and engines thereof such standards shall constitute a reduction from uncontrolled levels of emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen as actually measured from gasoline powered heavy duty vehicles over 10,000 pounds and engines thereof equivalent to the percentage reduction required for light duty motor vehicles in model year 1980 compared to the appropriate model year 1970 base or, for oxides of nitrogen, model year 1971 base (unless the Administrator finds and reports to the Congress that the control technology is not available or has not been available for a sufficient period of time to achieve compliance on any class of heavy duty vehicle or engine thereof and establishes standards which are based on the best available control technology and which constitute a reduction from any standards which apply in model years 1978 through 1980). The Administrator may, where appropriate, divide vehicles and engines thereof regulated under this paragraph into classes by size, weight, horsepower, and use patterns.".

(b) Section 206(a)(1) of the Clean Air Act is amended by inserting "(A)" after "(1)" and by adding at the end thereof the following:

"(B) In the case of heavy-duty motor vehicles, the Administrator may perform, or require to be performed, the tests provided under subparagraph (A) of this paragraph on heavy-duty motor vehicle engines for application in a range of vehicle configuration and use patterns.".

SEC. 22. Subparagraph (A) of paragraph (1) of section 202(b) of the Clean Air Act is amended by striking the term "1977", and inserting in lieu thereof "1980"; by striking the phrase "and 1976" after the term "1975" where it first appears, and inserting in lieu thereof "1976, 1977, 1978, and 1979".

SEC. 23. Subparagraph (B) of paragraph (1) of section 202(b) of the Clean Air Act is amended to read as follows:

"(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during (i) model year 1976 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 3.1 grams per vehicle mile, (ii) (subject to the provisions of paragraph (5) of this subsection) model years 1977, 1978, and 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile, and (iii) model year 1980 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 clause (iii) of this subparagraph, 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 year 1980 or 1981(aa) that has fuel economy at least equivalent to the fuel economy standard applicable in such model year under the Energy Policy and Conservation Act (89 Stat. 902) and that uses either an innovative engine system or emission control technology not involving a precious metal catalyst, or (bb) by any manufacturer whose sales, by corporate identify, for model year 1976 was less than 300,000 light-duty motor vehicle unit sales in the world and in whose case the Administrator determines that the ability to meet emission standards in the 1975 and subsequent model years was and is primarily dependent upon technology developed by others and purchased by such manufacturers.

SEC. 24. (a) Section 202(b)(5) of the Clean Air Act is amended to read as follows:

"(5) The Administrator shall promulgate regulations requiring each manufacturer whose sales represent more than 3 per centum of total light duty motor vehicle unit sales in the world to comply during model year 1979 with the emission standards required under paragraph (1) of this subsection for model year 1980 on 10 per centum of the manufacturer's projected total sales in model year 1979, as determined by the Administrator. Such regulations shall provide that no more than 90 per centum of such manufacturer's projected total sales of light duty motor vehicles in model year 1979 may be sold in compliance with the emission standards otherwise required under paragraph (1) of this subsection for model year 1979.".

(b) Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(f) 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.".

SEC. 25. Section 202(b) of the Clean Air Act is amended by adding a new paragraph (6) as follows:

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

eighty days after enactment of the Clean Air 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 1978 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.".

SEC. 26. Section 202(c)(1) of the Clean Air Act is amended to read as follows:

"(c)(1) The Administrator 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 subsection (a) of this section (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by subsection (b) of this section. The Administrator shall report to the Congress within six months of the date of enactment of this paragraph and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph.".

SEC. 27. Section 202(d) of the Clean Air Act is amended by amending paragraph (2) to read as follows:

"(2) in the case of any motorcycle or any other motor vehicle or motor vehicle engine not included in paragraph (1), be a period of use the Administrator shall determine.".

SEC. 28. (a) Section 203(a) of the Clean Air Act is amended by inserting "(A)" after "(3)" and by adding a new subparagraph (B) at the end of paragraph (3) as follows:

"(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".

(b) Section 205 of the Clean Air Act is amended to read as follows:

"SEC. 205. Any person who violates paragraph (1), (2), or (4) of section 203(a) or any manufacturer who violates paragraph (3) of section 203(a) shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3) of section 203(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (2), (3), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.".

SEC. 29. 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 ", or" in lieu thereof, and by adding a new subparagraph (C) as follows:

"(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.".

SEC. 30. (a) Section 206(b)(1) of the Clean Air Act is amended by inserting "(A)" after "(b)(1)" and adding a new subparagraph (B) at the end of such subparagraph as follows:

"(B) The Administrator shall within six months of the date of enactment of this subparagraph established a test procedure to implement, beginning no later than model year 1977, the authority of subparagraph (A) of this paragraph.".

(b) Section 206(a) of the Clean Air Act is amended by adding the following new paragraph:

"(3) Each new motor vehicle or new motor vehicle engine shall be certified to conform to the regulations prescribed under section 202 of this Act for the particular vehicle configuration, anticipated use pattern, and equipment of such vehicle or engine. The Administrator shall certify each vehicle or engine with an allowance to assure conformity with such regulations for air-conditioning or similar equipment to be subsequently installed. Such vehicle or engine shall be deemed to be covered by a certificate of conformity only if no equipment is added or other modification made which is not within the allowance provided for in this paragraph.".

SEC. 31. 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 1980 shall comply with the requirements of section 202 of this Act regardless of the altitude at which they are sold.

"(2) Prior to the manufacture of model year 1980, light duty vehicles and engines, the Administrator is prohibited from requiring separate or additional measures on any light duty vehicle or engine to insure compliance with the requirements of section 202 of this Act at high altitudes. Any such requirements in effect at the time of enactment of this subsection are suspended.

"(3) 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.".

SEC. 32. Section 207(a)(1) of the Clean Air Act is amended by adding the following new sentences at the end thereof: "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 placement 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 per centum of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term 'designed for emission control' as used herein 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. It is not intended to include 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.".

SEC. 33. (a) Section 207(a) of the Clean Air Act is amended 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 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 of this Act. 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 one year after the date of the enactment of this paragraph. Before the effective date of such regulations all parts shall be deemed to have such certification.".

(b) Section 207(b)(2) of such 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) of this section, nor shall any such warranty be invalid on the basis of the installation or use of any air-conditioning system not installed in the factory of the vehicle manufacturer, where the particular vehicle or engine in which such air-conditioning system is installed is certified in accordance with section 206(a)(3) with an allowance for air-conditioning or similar equipment to be subsequently installed.".

SEC. 34. Paragraph (3) of subsection (c) of section 207 of the Clean Air Act is amended to read as follows:

"(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.

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

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

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

"(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 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.".

SEC. 35. 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, condensors, 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)) that has a design life of less than the useful life of such vehicle or engine, unless such part, item, or device is covered by any warranty not mandated by this Act or unless such part fails prior to its design life.".

SEC. 36. Section 209(a) of the Clean Air Act is amended by adding the following: "Notwithstanding any provisions of this subsection, any State which has adopted a program for light duty motor vehicle emission inspection, testing, and maintenance as part of a State implementation plan approved or promulgated under section 110 of this Act may apply such program as a condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle. Any cost obligation of any dealer incurred as a result of any requirement imposed under the preceding sentence shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited."

SEC. 37. Section 209 of the Clean Air Act is amended by adding the following new subsection:

"(d) Notwithstanding subsection (a) of this section any State in which a region or portion thereof has been identified pursuant to section 107(d)(1)(A) of this Act may adopt and enforce for model year 1979 the emission standards for light duty motor vehicles required for model year 1980 under section 202(b)(1) of this Act: Provided, That the State shows to the satisfaction of the Administrator that the adoption of the standard in 1979 is required to achieve any ambient air quality standard by 1982 and maintain thereafter. Light duty motor vehicles offered for sale within such State shall be certified to comply with such standards in accordance with the procedures established under section 206 of this Act.".

SEC. 38. Section 211 of the Clean Air Act is amended by adding a new subsection as follows:

"(e)(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 of this Act.

"(2) 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) of this subsection shall, within one hundred and eighty days after the date of enactment of the Clean Air Act Amendments of 1977, cease to distribute such fuel or fuel additive in commerce.

"(3) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under pargraphs (1) and (2) of this subsection if he determines that the applicant has established that such fuel or fuel additive and the emission products thereof will not impair or will not contribute to impairing the performance over the useful life of any emission control device or system which has been certified pursuant to section 206 of this Act. 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 deemed to be granted.

"(f)(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emission 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.

"(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).

"(3) 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.".

SEC. 39. Section 211 of the Clean Air Act is amended by adding a new subsection (f) as follows:

"(f) The Administrator shall conduct a study and report to Congress by January 1, 1978, 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.".

SEC. 40. Section 211 of the Clean Air Act is amended by adding a new subsection (g) as follows:

"(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 producing gasoline which—

"(i) is only that fraction of the capacity of which was in operation or under construction on October 1, 1976, and

"(ii) 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) is owned or controlled by a refiner with a total combined crude oil or bona fide stock capacity (as determined by the Administrator) of 100,000 barrels per day or less.

"(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 gasoline production of the small refinery for calendar year 1976 (or, in the case of refineries under construction, half of the designed crude oil capacity) was (in barrels per day)	The applicable amount is, (in grams per gallon)
5,000 or under	2.5
5,001 to 10,000	2.0
10,001 to 15,000	1.5
15,000 or above	(1)

[1] As prescribed by the administrator.

"(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)(C) of this Act.".

SEC. 41. Title II of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART C—RAILROAD LOCOMOTIVE EMISSIONS

"SEC. 235. (a) The Administrator 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—

"(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.

"(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.".

SEC. 42. (a) Section 302 of the Clean Air Act is amended by adding seven new subsections as follows:

"(i) The term 'emission limitation' means a requirement established by a State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including a detailed schedule and timetable of compliance: *Provided*, That in establishing an emission limitation for coal-fired steam electric generating units subject to the provisions of section 118 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.

"(j) The term 'schedule and timetable of compliance' means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

"(k) The term 'major emitting facility' means any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any air pollutant, except that for the purposes of section 110(g) of this Act, the term is limited to the following types of such stationary sources: fossil-fuel fired steam electric plants of more than 250 million British thermal

units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities, and such other major emitting facilities as the Administrator determines to be significant potential sources of air pollutants.

"(l) The term 'baseline air quality concentration' refers to the ambient concentration levels which exist at the time of the first application for a permit in an area under section 110(g) of this Act, based on air quality data available in the Environmental Protection Agency or an air pollution control agency and such monitoring data as the permitting authority may require the permit applicant 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 be accounted against the limitations on projected increases in pollutant concentrations established in paragraph (2) and (5) of section 110(g) of this Act.

"(m) The term 'stationary source' shall have the same meaning as such term has under section 111(a)(3) of this Act.

"(n) The term 'reasonable further progress' means that combination of control measures necessary to reduce emissions in the region or portion thereof so as to minimize in each successive year on an incremental basis both the number of times and the extent to which the applicable standard is exceeded, the result of which will be achievement of the applicable standard in the time required.

"(o) The term 'lowest achievable emissions rate' means that rate of emissions which reflects either (A) the most stringent emissions limitation which is contained in the implementation plan of any State and which is determined by the reviewing State to be achievable or (B) the lowest emission rate which is achieved in practice for such type of source, whichever is lower.".

(b) Section 302(d) of the Clean Air Act is amended—

(1) by striking out the word "and" immediately preceding "American Samoa";

(2) by striking the period immediately following "American Samoa" and inserting in lieu thereof ", and the Trust Territory of the Pacific Islands.".

SEC. 43. (a) Section 304(a) of the Clean Air Act is amended—

(1) by 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 section 110(g) of this Act or who is alleged to be in violation of any condition of such permit.".

(b) Section 304(f) of the Clean Air Act is amended by inserting "requirement," after "a" in paragraph (1).

SEC. 44. (a) Section 307 of the Clean Air Act is amended by adding the following new subsection at the end thereof:

"(d) 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.".

(b) Section 113(b) of such Act, as amended by this Act, is further 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.".

SEC. 45. (a) The Clean Air Act is amended by inserting a new section 314 as follows after section 313 and renumbering succeeding sections accordingly:

"EMPLOYEE PROTECTION

"SEC. 314. (a) No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceding under this Act or under any aplicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act or of any applicable implementation plan.

"(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

"(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

"(d) This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of an applicable implementation plan approved or promulgated under section 110 of this Act, a new source performance standard under section 111 of this Act, a standard for hazardous emissions under section 112 of this Act, any requirement relating to inspections under section 114 of this Act, or any other prohibition or limitation established under this Act.

"(e) 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. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. 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, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, lay off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.".

(b) Section 114 of the Clean Air Act is amended:

(1) To amend paragraph (iii) of subsection 114(a) to read as follows:

"(iii) carrying out section 119, 303, or 314.".

(2) To amend paragraph (2) of subsection 114(a) to strike the "and" at the end of section 114(a)(2)(A); to change the period at the end of section 114(a)(2)(B) to a comma; and inserting the following: "and (C) may at reasonable times have access to and copy any employer's records relating to matters being investigated pursuant to section 314.".

SEC. 46. The Clean Air Act is amended by inserting a new section 315 as follows after new section 314 and renumbering succeeding sections accordingly:

"NATIONAL COMMISSION ON AIR QUALITY

"SEC. 315. (a) There is established a National Commission on Air Quality which shall study and report to the Congress on—

"the economic, technological, and environmental consequences of achieving the purposes of this Act and programs authorized by it;

"(2) available alternatives, including enforcement mechanisms to protect and enhance the quality of the Nation's air re-

sources 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 (i) of this section the prevention of significant deterioration of air quality;

"(3) the technological capability of achieving and the economic, energy, and environmental impacts of achieving or not achieving required emission control levels for mobile sources of oxides of nitrogen (including the research objective of 0.4 gram per vehicle mile) in relation to and independent 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;

"(8) (A) the special problems of small business 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 impending 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.

"(b) Such Commission shall be appointed within sixty days after enactment of this section and shall be composed of sixteen members, including the chairman and the ranking minority Member if the Senate Committee on Environment and Public Works and the House Committee on Interstate and Foreign Commerce, who shall serve on such Commission ex officio and without vote, and twelve members of the public appointed by the President. Such Commission shall include four State Governors, who may designate the chief administrative officers of the State's air pollution control agency. The Chairman of such Commission shall be elected from among its members.

"(c) 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.

"(d) 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 charges are needed in the requirements for control of emissions of oxides of nitrogen under this Act; and for other purposes.

"(e) (1) Except as provided in paragraph (2) of this subsection, a report shall be submitted with regard to all other Commission studies and investigations, together with any appropriate recommendations, not later than three years after the date of enactment of this section.

"(2) A report on the results of the study and investigation of the Commission authorized under subsection (i) of this section, together with any appropriate recommendations, shall be submitted not later than two years after the date of enactment of this section.

"(3) A report on the results of the study and investigation of the Commission authorized under subsection (a) (7) of this section, together with any appropriate recommendations, shall be submitted not later than two years after the date of enactment of this section. During the preparation of this specific study and report, the Commission shall seek the participation and consultation of the Chairman of the Council on Environmental Quality; the Administrator of the National Oceanic and Atmospheric Administration; the Administrator of the Environmental Protection Agency; and Governors of those States having air quality control regions in which primary ambient air quality standards for photochemical oxidants are exceeded at the time of enactment of these amendments or are projected to be exceeded within the period of the study, or the chief administrative officers of their State air pollution control agencies designated by any State Governor. The Commission may contract with noprofit 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.

"(f) 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.

"(g) There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,000,000 beginning in fiscal year 1978.

"(h) 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.

"(i) (1) The Commission shall, in carrying out the study authorized under this section, give priority to a study of the implementation of the provisions of subsection (g) of section 110 of this Act.

"(2) In carrying out the authority of this subsection the Commission shall study, among others, the following:

"(A) whether the provisions relating to the designation of, and protection of air quality in class I regions under this Act are appropriate to protect the air quality over lands of special national significance, including recomendations 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 subsection (g) of section 110 of this Act, 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 subsection (g) of section 110 of this Act, including an analysis of the costs associated with that technology;

"(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 this Act; and

"(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 this Act for the pollutants subject to regulation under subsection (g) of section 110 of this Act.

"(3) For the study authorized under this subsection there shall be made available by contract to the Commission from the appropriation to the Environmental Protection Agency for fiscal year 1977 the sum of $1,000,000.".

SEC. 47. Section 318 of the Clean Air Act, as redesignated by this Act, is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 318. There are authorized to be appropriated to carry out this Act, other than sections 103(f) (3) and (d), 104, 110(h) (7), 150 through 157, 212, 315, and 403, not to exceed $147,805,000 for fiscal year 1977, and $200,000,000 for each of fiscal years 1978, 1979, and 1980. There are authorized to be appropriated to carry out section 110(h) (7) of this Act beginning in fiscal year 1978, $75,000,000 to be available until expended. 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.".

SEC. 48. The Federal Trade Commission shall undertake a study of the impact on competition of any warranty required to be provided pursuant to the Clean Air Act, taking into account the objectives of the Act. Such study shall include public hearings. Such study shall include an analysis of any measures implemented by the Administrator of the Environmental Protection Agency to prevent or diminish the impact of such warranties on competition and shall include a finding with respect to whether or not a significant impact on competition would result from such warranty if the warranty applied for the actual useful life of the vehicle. Such study shall be undertaken primarily by the Bureau of Competition in consultation with the Bureau of Consumer Affairs, the Department of Justice, and the Environmental Protection Agency. The report of such study shall be submitted to the Committee on Environment and Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives no later than eighteen months after the enactment of the Clean Air Amendments of 1977.

SEC. 49 The Congress finds that emissions of oxides of nitrogen are projected to increase dramatically in coming years and that inadequate controls are currently projected for stationary sources of oxides of nitrogen, and directs the Administrator to study and report to the Congress within one year on the possible creation of a system of penalties on emissions of oxides of nitrogen. Such penalties shall be designed for new major emitting facilities, or existing major emitting facilities, or both, to encourage the development of more effective systems and technologies for control of emissions of oxides of nitrogen. Any proposed penalty system recommended by the Administrator should be planned to terminate, for each category of facilities, at such time as the Administrator is satisfied that adequate technology exists and is available to control oxides of nitrogen to the greatest extent practicable for that category of facilities, and that such controls are being, or will be, installed on all such facilities. As a part of such report, the Administrator shall also recommend a system by which major emitting facilities would be required to compile records to determine any such emission penalty that would be due.

SEC. 50. Not later than July 1, 1977, or ninety days following enactment of this Act, whichever is later, the Administrator shall arrange for the erection of signs or other public notifications, consistent with the Highway Beautification Act, at major points of public access to any metropolitan area where any primary ambient air quality standard has not been attained and maintained as of such date. Such sign or notification shall specify that, due to pollution, the air in that area is hazardous to public health at various times during the year. The Administrator shall remove such sign or other notification when he determines that such area no longer exceeds any primary ambient air quality standard.

SEC. 51. 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 emission.

SEC. 52. (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 Clear Air Act, as amended, 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.

(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 amended, 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 amended, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act.

(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.

SEC. 53. Section 110(c)(2) of such Act is amended by inserting at the end thereof the following new subparagraph:

"(F)(i) Any measure in an applicable implementation plan which requires a toll or 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 clause (ii).

"(ii) In the case of any applicable implementation plan with respect to which a measure has been eliminated under clause (i), 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 section 110(h)(2)(D)), to:

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

"(B) 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 (in so far 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 clause (i), provide for emissions reductions equivalent to the reductions identified with the tolls or charges eliminated.

"(iii) Any revision of an implementation plan for purposes of meeting the requirements of clause (ii) shall be submitted in coordination with any plan revision required under section 110(h).".

SEC. 54. The Administrator shall conduct a study concerning the effect on the public health and welfare of sulfate emissions from all sources. The Administrator shall report the results of such study, including a recommendation regarding the feasibility and necessity of regulating sulfate emissions, to the appropriate committees of Congress not later than two years after the date of enactment of this section.

SEC. 55. (a) Not later than 12 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.

(b) Not later than 18 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 subsection (a) entered the environment and thereafter human tissue.

(c) The Administrator, in consultation with the 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 relationship 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 committees of the Congress.

SEC. 56. Notwithstanding the provisions of Section 122 of the Clean Air Act as amended (Measures to Prevent Economic Disruption or Unemployment), the President in considering an Order or Rule to require the use of locally or regionally available coal or coal derivatives to prevent economic dislocation or unemployment shall take into account the final cost to the consumer of such Order or Rule.

SEC. 57. This Act may be cited as the "Clean Air Amendments of 1977".

Mr. ROBERT C. BYRD. Mr. President, the Senator from North Carolina (Mr. MORGAN) would vote "aye," if present. It is impossible for him to be present to vote. He asked me to attempt to obtain a pair for him. I have tried to do so. I have been unable to do so. I would have given him a pair had I voted "no" on the measure, but I have voted "aye."

I want the RECORD to show that I sought to obtain a pair for Mr. MORGAN but was unable to do so and that if he were present and voting, he would have voted "aye."

I make the same statement on behalf of Mr. BUMPERS.

Mr. HART. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I move that S. 252 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HART. Mr. President, for my own part, I wish to compliment the Senator from Maine, the distinguished subcommittee chairman, for his work on this measure, and also the distinguished ranking minority member, the Senator from Vermont, for their excellent leadership on this bill, as well as the full committee staff for all the work they have done.

Mr. STAFFORD. Mr. President, I would like to express my gratification at the opportunity to work on this important clean air legislation with the distinguished chairman of the Committee on Environment and Public Works, Senator RANDOLPH; the distinguished chairman of the Subcommittee on Environment, Senator MUSKIE of Maine; my colleague, Senator HART of Colorado, and all of the others, the minority leader, Senator BAKER, all of whom have worked so hard to bring the bill through the Senate.

I especially want to pay respect on this side to the members of our staff who have given dedicated service to us on the floor, and earlier in the committee, in the formulation and the presentation of the legislation which the Senate has just passed. I have particular reference here to Lee Rawls, Bailey Guard, Hal Brayman, Kathy Cudlipp, Rick

Herod, Mary Jane Burdette, Joan Ramsay, and Jean Schrag.

I thank the Chair.

Mr. BAKER. Mr. President, I take this brief opportunity to commend the distinguished Senator from Vermont, the ranking Republican on the Environment and Public Works Committee, for his distinguished service in the passage of this measure.

He has done yeoman duty as have other members of the committee and other Members of the Senate in bringing to conclusion and final passage by this body of a significant piece of new legislation.

I hope it survives in conference in essentially this form and is signed promptly by the President.

Mr. President, I once again pay my genuine and sincere respects and express my admiration for the distinguished chairman of the full committee, Senator RANDOLPH, who has done so much for the committee, for this branch of legislative endeavor, and for the country in his efforts in behalf of all of us.

Mr. ROBERT C. BYRD. Mr. President, on yesterday I expressed the appreciation of the leadership on this side of the aisle to the distinguished chairman of the Public Works Committee and to the distinguished manager of the bill, Mr. RANDOLPH, and Mr. MUSKIE, respectively, and with respect to the fine work that was done by the distinguished Senator from Vermont (Mr. STAFFORD) and various other Senators whose names I stated specifically on yesterday.

Today I say again that it is with great admiration and respect that I commend these men for the skill and the patience and the great ability which were demonstrated by all of them as the Senate worked its way through this important but controversial measure.

Mr. RANDOLPH addressed the Chair.

Mr. BAKER. Mr. President, if the Senator will permit me to supply one omission in paying my respects to the distinguished chairman of the committee and the ranking minority member of the committee. I omitted to pay my respects as well to the distinguished chairman of the subcommittee, Mr. MUSKIE, with whom I have served as the ranking Republican on the subcommittee and I cannot tell you how much, Mr. President, and tell my colleagues how much I admire the diligence with which he approaches this legislation and the effectiveness with which he dispatches it. I pay my special compliments and respects to him once again.

Mr. RANDOLPH. Mr. President, my commendations are not mere pleasantries. I think the record should reflect that as chairman of the Committee on Environment and Public Works I am more conscientious than any member of that committee about the constructive cooperative efforts which have characterized the members of that committee regardless of the party in which they hold membership.

This has been a very complex, often a very, let us say, vigorously fought bill.

I shall express my thanks to all members of the committee. I now, of course, thank Senator MUSKIE, chairman of our subcommittee, handling this measure, and BOB STAFFORD, the ranking minority member, joining here in hands across the aisle as it were to guide this legislation to a successful conclusion, which in the final analysis I hope will be a victory for the American people.

This measure was brought to the Senate after approximately 2½ years of work on this subject by the members of the Committee on Environment and Public Works. Attention to the revision of the Clean Air Act extended through the entire 94th Congress and now 5 months into the 95th Congress. As a member of this committee, the past 11 as its chairman, I have never participated in such extensive preparation of a legislative proposal. Since we began this effort, there have been many days of hearings both in Washington and in other parts of the country. There have been 58 markup sessions by both the Subcommittee on Environmental Pollution and the full committee. In addition, members of the committee participated in a lengthy conference with the House of Representatives last year on a similar bill that failed to be enacted in the last days of the 94th Congress.

Throughout this period, the members of the committee have worked diligently to examine the issues and to develop a legislative proposal that responded in a balanced fashion to our country's environmental, economic, and social needs. It has been a lengthy process, but I am gratified that the members of the committee were willing to devote the time and energy required to write this bill.

The able minority leader, Mr. BAKER, was our ranking minority member when the task of writing a new Clean Air Act was begun. His desire to produce an effective and balanced bill is evident in the measure now before the Senate.

Mr. President, all members of the committee have been closely involved in the preparation of this bill. Many have specific areas of concern but all have worked together to produce a workable, fair, and effective air pollution bill. Long hours, extensive preparation, lengthy debate, and much thought have all been contributed by Senators GRAVEL, BENTSEN, BURDICK, CULVER, HART, ANDERSON, MOYNIHAN, MCCLURE, DOMENICI, CHAFEE, and WALLOP. I commend each of them for their participation in what has been a team effort from beginning to end.

The Senator from Vermont (Mr. STAFFORD) has recognized the involvement in this legislation of the members of the committee's minority staff. As always, the staff made valuable contributions and helped Senators in carrying out their responsibilities. I commend the dedication and loyalty of our majority staff: John W. Yago, Philip T. Cummings, Richard M. Harris, Leon G. Billings, Karl Braithwaite, Haven Whiteside, Charlene Sturbitts, George F. Fenton, Paul Chimes, Polly Medlin, Wesley Hayden, Frances Williams, Peggy Nagle, Deborah Canavan, Margaret Meyer, Ann Underwood, Kathaleen Forcum, Ann Garrabrant, Kathleen Korpon, Tanya Hart, Elsie Kennedy, John Freshman, Sally Walker, Joyce Kennedy, Jack Coogan, Richard Greer, John B. Purinton, Veronica Holland, Randolph G. Flood, Susan Johnson, Pat Stoppe, Dick Oshlo, Kevin Cornell, Ronald Katz, and Robert Van Heuvelin.

As we go to conference, I am sure that Senator ROBERT C. BYRD as our leader in this body and Senator BAKER, who works with him as the leader of the minority, can know that in the Senate even though this was a measure that was controversial, that through the leadership, especially of Senator BYRD, in cooperation of Senator BAKER, we kept moving and in 3 days completed what is a monumental piece of legislation. It was in the best tradition of a Senate doing its job well.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished senior Senator from West Virginia who always not only does his work well, but speaks also well.

ERDA NONNUCLEAR AUTHORIZATIONS, 1978

Mr. ROBERT C. BYRD. Mr. President, I believe that under the order previously entered the Senate is to proceed now to the consideration of Calendar Order No. 152, S. 1340. Is that correct?

The PRESIDING OFFICER. That is correct.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1340) to authorize appropriations to the Energy Research and Development Administration for energy research, development, demonstration, and related programs in accordance with sec. 261 of the Atomic Energy Act of 1954, as amended, sec. 305 of the Energy Reorganization Act of 1974, and sec. 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes,

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources with an amendment in the nature of a substitute.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that no time under any agreement begin running today on the bill but that on Monday when the debate resumes on S. 1340 there be a time limitation for debate of 1 hour to be equally divided between Mr. JACKSON and Mr. HANSEN, that there be a limitation on any amendment thereto of 30 minutes, that there be a time limitation on any debatable motion or appeal or point of order, if such is submitted to the Senate for its discussion, of 20 minutes, and that the agreement be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement is as follows:

A bill to authorize appropriations to the Energy Research and Development Administration for energy research, development, demonstration, and related programs in accordance with sec. 261 of the Atomic Energy Act of 1954, as amended, sec. 305 of the Energy Reorganization Act of 1974, and sec. 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and for other purposes, debate on any amendment shall be limited to 30 minutes to be equally divided and controlled by the mover of such and the

manager of the bill; debate on any debatable motion, or appeal shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill; and debate on any point of order which is submitted or on which the Chair entertains debate shall be limited to 20 minutes, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the Minority Leader or his designee: *Provided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of final passage of the said bill, debate shall be limited to 1 hour, to be equally divided and controlled, respectively, by the Senator from Washington (Mr. Jackson) and the Senator from Wyoming (Mr. Hansen): *Provided*, That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, appeal, or point of order.

ORDER FOR RECESS UNTIL 12:30 P.M., MONDAY, JUNE 13, 1977

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12:30 p.m. on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF S. 1340, ON MONDAY, JUNE 13, 1977

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on Monday, the Senate proceed then to the consideration of the bill, S. 1340, which has already been ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERIM REGULATORY REFORM ACT OF 1977

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that S. 263, Calendar Order No. 175, has been cleared for passage by unanimous consent.

I, therefore, ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 175, S. 263.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 263) to provide for interim regulatory reform as to certain independent regulatory agencies.

The PRESIDING OFFICER (Mr. SASSER). Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Interim Regulatory Reform Act of 1977".

LAW REVISION

SEC. 2. (a) Each Commission shall, in cooperation with any other interested department, agency, or instrumentality of the Federal Government—

(1) make a full and complete review and study of the law of the United States relating to that Commission (including court decisions, Commission orders in adjudicated cases, executive orders and other applicable orders and decrees) for the purpose of formulating and recommending to the Congress legislation that would better achieve the purpose for which that Commission was established; and

(2) review, study, and make recommendations for revision and codification of the statutes and other lawful authorities administered by or applicable to that Commission; the repeal, transfer, consolidation, and modification of any particular provisions and portions thereof; any changes and modifications in the organization and structure of such statutes in the technical presentation of matters included therein; and such changes in the authorities delegated, the functions prescribed, and the structure and procedures mandated or authorized; as the Commission believes may enhance competition and protect consumers by coordinating, making more understandable, and modernizing the laws of the United States administered or enforced by that Commission.

(b) The Chairman of each Commission, if three or more of the respective Commissioners agree, may appoint and compensate a qualified individual to serve as the director of that Commission's law revision activity conducted under this Act. Such person shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be entitled to receive compensation at a rate established by the appropriate Commission, but at a rate not in excess of the maximum rate (as may be set from time to time) for GS-18 of the General Schedule under section 5332 of such title. Each director shall, subject to the direction of the appropriate Commission, supervise the preparation of reports and activities of applicable personnel involved in that Commission's activities under this Act. Individuals may be employed by each Commission on a full- or part-time basis for purposes of assisting in, or contributing to, law revision activity conducted under this Act, without regard to the provisions of title 5, United States Code, relating to appointment and compensation of individuals in the competitive service. Any department, agency, or other instrumentality of the Federal Government shall, to the extent of available resources and upon a written request from the Chairman of any Commission to which this Act applies, make available to that Commission, on a nonreimbursable or reimbursable basis, such qualified personnel (with their consent and without prejudice to their position and rating), services, facilities, and information as may be necessary or appropriate to assist in achieving the purposes of this Act.

(c) Each Commission shall invite, and afford interested persons and other governmental entities an opportunity to submit, comments and recommendations with respect to some or all of the law revision activity described in subsection (a). Each Commission shall evaluate and consider all responses and submissions received by it with respect to such law revision activity. Each Commission shall coordinate its law revision activity under this Act with any such activity conducted by the Law Revision Counsel of the House of Representatives or the Congressional Research Service of the Library of Congress. The head of each department, agency, and independent instrumentality of the Federal Government shall, upon request, cooperate with, assist, and make appropriate presentations to, and reviews for, each Commission, with respect to its law review activity conducted under this Act.

REPORTS

SEC. 3. The Chairman of each Commission shall submit to the Congress and the President—

(1) a preliminary report with respect to law revision activity conducted under this Act by the Commission of which he is Chairman, including a statement indicating what, if any, additional legislative or other action is necessary to implement this Act, not later than 1 year after the date of the enactment of this Act; and

(2) a final report with respect to such law revision activity, not later than October 1, 1980.

Each final report shall include the text of the proposed revision and codification prepared by the Commission filing that report; an explanation of each significant provision proposed for inclusion therein; an analysis of the economic and other consequences of such revision and codification; a discussion of significant alternatives considered but not recommended; and such other information as may be useful to the Congress. Each final report shall be designed to facilitate congressional consideration of matters relating to law revision and shall be consistent with the purpose of the Congress in this Act to clarify, simplify and improve (both substantively and technically) the laws of the United States administered or enforced by the Commission.

PROTECTION OF OFFICERS

SEC. 4. Section 1114 of title 18, United States Code, is amended by inserting immediately after "Consumer Product Safety Commission," the following: "the Interstate Commerce Commission, the Federal Trade Commission, the Federal Power Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Federal Maritime Commission,".

DEFINITION

SEC. 5. For the purposes of this Act, the term "Commission" shall mean the Federal Communications Commission, the Interstate Commerce Commission, the Federal Power Commission, the Consumer Product Safety Commission, the Civil Aeronautics Board, the Federal Maritime Commission, and the Federal Trade Commission.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-201), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

It is the purpose of this bill to provide for regulatory reform with respect to a number of independent regulatory agencies which are subject to the jurisdiction and oversight responsibility of the Committee on Commerce, Science, and Transportation by directing each of those agencies to prepare and submit to the Congress a proposed modernization, revision, and codification of all statutes and other lawful authorities administered or applied by it. The bill also provides for penalties for assaults on officials of these agencies, when occurring during the performance of their official duties.

The agencies covered by the bill are, in the order of their establishment by the Congress, the Interstate Commerce Commission (ICC); the Federal Trade Commission (FTC); the Federal Power Commission (FPC); the Federal Communications Commission (FCC); the Civil Aeronautics Board (CAB); the Federal Maritime Commission (FMC); and the Consumer Product Safety Commission (CPSC).

BACKGROUND AND NEED

During the past 7 years, the Committee has conducted many oversight hearings and

other oversight activities with respect to the independent regulatory agencies subject to its jurisdiction. Subsequent to these oversight hearings, the Committee has made a number of legislative recommendations which have been enacted into law, with respect to one or another of the independent regulatory agencies. In particular, during consideration of the Regional Rail Reorganization and Regulatory Reform Act, the Committee determined that it was necessary for the Interstate Commerce Act, which had originally been enacted in 1887, and subsequently amended on many occasions, to be revised in order to have the statute conform with current needs, case law, and circumstances.

In April 1976, Senator Pearson introduced S. 3308 which would have required each of the independent regulatory agencies to prepare and submit to the Congress comprehensive materials relating to the rules and regulations which they had promulgated pursuant to their statutory authority and reorganization plans which they administer and which define their authority. In considering this legislation in the 94th Congress, the Committee determined that there were a number of additional specific provisions which should also be applied to each of the independent regulatory agencies to improve their performance, effectiveness, and so forth. For purposes of such interim legislation, the Committee also determined that a number of other measures which had been approved and established as practicable, should also be applied to other agencies. As a result in May 1976, the Committee ordered S. 3308 reported with an amendment in the nature of a substitute, which was somewhat broader than the proposal as originally introduced by Senator Pearson. Upon Senate passage, S. 3308 was referred to four committees in the House of Representatives. Because of the brief time remaining in the 94th Congress, and the complexity of the referral, there was no consideration in the House of Representatives of the bill.

In January 1977, Senators Pearson and Magnuson introduced S. 263, which was a refined version of S. 3308, containing virtually identical provisions to S. 3308. The Committee on Commerce, Science, and Transportation held hearings on S. 263 on April 4, 1977, at which time testimony was received from the chairman (or his designated representative) of each of the independent regulatory agencies. Additionally, comments were received for the hearing record from other interested individuals.

Subsequently, the Committee on Commerce, Science, and Transportation met in open executive session on May 10, 1977, and ordered S. 263 as amended, reported favorably. The Committee determined that in order to expedite consideration of the measure in the House of Representatives, the bill should be reported as several original bills, each of which would be subject to a more limited referral in the House of Representatives.

DESCRIPTION AND ANALYSIS

Law revision

S. 263, as reported by the Committee, provides for a significant legislative beginning in the area of regulatory reform, as it applies to the independent regulatory agencies subject to the Committee's oversight. Section 312 of the Railroad Revitalization and Regulatory Reform Act of 1976 authorizes and directs the ICC to prepare and submit to Congress (by not later than February 5, 1978), a final draft of a proposed modernization and revision of the Interstate Commerce Act, and a proposed codification of all acts supplementary to the Interstate Commerce Act. The final draft submitted by the ICC must be designed to simplify the present law and to harmonize regulation with respect to the various transportation modes regulated by the ICC.

The Committee believes that the organic acts administered by the other independent regulatory agencies are also in need of review and revision. Indeed, one of these agencies, the FMC, does not have such an act to define its powers, duties, and responsibilities. Although the Maritime Commission was created 16 years ago, it still operates under the authority of a reorganization plan pursuant to which it administers transferred functions rather than powers granted to it by act of Congress.

Protection of officers

Section 1114 of title 18 United States Code makes it a Federal crime (murder or manslaughter, as the case may be) to kill a judge of the United States, a U.S. attorney, an FBI agent, or any other specified Federal official or employee. Section 1111 of title 18 makes it a Federal crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in section 1114, while that person is engaged in, or on account of, the performance of official duties.

As part of its recent amendment to the Consumer Product Safety Act (Public Law 94-284), the Committee reported legislation which amends section 1114 to read, in pertinent part:

"Whoever kills * * * any officer or employee of * * * the CPSC * * * assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title."

S. 263 further amends section 1114 to add to the list set forth therein each of the other independent regulatory agencies under the Committee's oversight. It is just as reasonable to establish Federal jurisdiction for assaults on officers or employees of independent regulatory agencies as it is for assaults on officers or employees of the executive branch. For purposes of Federal criminal jurisdiction, there should be no distinction between executive and independent agency Federal employees, when they are engaged in investigative, inspection, or law enforcement functions, if they are criminally attacked in the course of, or as a consequence of, their official duties.

ESTIMATED COSTS

The Committee estimates that implementation of S. 263, as reported, will result in a maximum cost to each agency of $100,000 per year, during the course of the law revision activity. For the seven agencies subject to this bill, therefore, the total cost through October 1, 1980, would be $2,100,000. The Committee knows of no cost estimate by any Federal agency which is at variance with this estimate. Pursuant to section 403 of the Congressional Budget Act of 1974, the Committee requested the Congressional Budget Office to submit its estimate of the cost of the legislation. As of the date of reporting, however, no such estimate has been received.

REGULATORY IMPACT STATEMENT

Implementation of S. 263, as reported, will not result in any change in Federal regulation. To the extent that an opportunity for the public to participate in the individual agency's law revision activity, costs may be borne by those so wishing to participate.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

The bill (S. 263) was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WAIVER OF SECTION 402(a) OF CONGRESSIONAL BUDGET ACT—CONSIDERATION OF S. 1061

Mr. ROBERT C. BYRD. Mr. President, I understand that there is a waiver resolution at the desk to S. 1061, Calendar Order No. 205, and that it is cleared for unanimous consent action.

I, therefore, ask unanimous consent that the Senate proceed to the immediate consideration of that resolution.

The PRESIDING OFFICER. The resolution will be stated.

The assistant legislative clerk read as follows:

A resolution (S. Res. 180) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1061.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate resolution (S. Res. 180) was considered, and agreed to, as follows:

S. RES. 180

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1061. Such waiver is necessary because the committee wished to consider this measure, which authorizes new borrowing authority for the District of Columbia government, in conjunction with other measures affecting the operations of the District of Columbia but which did not involve the authorization of new budget authority and therefore were not required to be reported by May 15. Hearings were held relatively late because of the reorganization of the Senate at the beginning of the Ninety-fifth Congress.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MILITARY CONSTRUCTION AUTHORIZATIONS

Mr. HART. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1474.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1474) to authorize certain construction at military installations, and for other purposes.

(The amendment of the House is printed in the House proceedings of the RECORD of June 6, 1977.)

Mr. HART. Mr. President, I move that the Senate disagree to the amendment of the House on S. 1474 and request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the

Presiding Officer appointed Mr. HART, Mr. STENNIS, Mr. JACKSON, Mr. CANNON, Mr. HARRY F. BYRD, JR., Mr. NUNN, Mr. THURMOND, Mr. TOWER, and Mr. SCOTT conferees on the part of the Senate.

TRANSFER OF MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that Calendar Order No. 205, S. 1061, is now ready for passage by unanimous consent. I ask that the clerk transfer that measure to the Consent Calendar.

The PRESIDING OFFICER. The clerk will transfer it.

Mr. ROBERT C. BYRD, Mr. President, I understand that Calendar Order Nos. 222 and 223 are ready for passage by unanimous consent. I ask that the clerk transfer those two measures to the Consent Calendar.

The PRESIDING OFFICER. They will be so transferred.

Mr. ROBERT C. BYRD. Mr. President, some complications have arisen in respect to three measures that are on the Unanimous Consent Calendar. I ask that the clerk transfer Calendar Order Nos. 139, 180, and 210 from the Unanimous-Consent Calendar back to the General Orders Calendar.

The PRESIDING OFFICER. They will be so transferred.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business.

MODIFICATION OF LEGISLATIVE SCHEDULE FOR MONDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the ERDA authorization bill, S. 1340, on Monday, and without prejudice to Calendar Order No. 133, H.R. 5262, the international bank reconstruction and development bill, which was to follow the ERDA authorization bill under the order entered several days ago, the Senate proceed to the consideration of Senate Resolution 178, a resolution of waiver in regard to Calendar Order No. 204, S. 1231, a bill to raise the limitation on appropriations for the U.S. Commission on Civil Rights; and that upon favorable disposition, if it is favorable, of that budget waiver, Senate Resolution 178, the Senate then, on Monday, proceed to the consideration of S. 1231, the bill to raise the limitation on appropriations for the U.S. Commission on Civil Rights.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the Senate on Monday will convene at 12:30 p.m.

After the two leaders or their designees have been recognized under the standing order, the Senate will proceed immediately to the consideration of the ERDA authorization bill, S. 1340, on which there is a time limitation agreement of 1 hour, with 30 minutes on any amendment thereto. I would assume that a rollcall vote or rollcall votes will occur in relation to that measure, and upon the disposition of that measure, the Senate will take up Senate Resolution 178, the budget waiver resolution in connection with S. 1231, the bill to raise the limitation on appropriations for the U.S. Commission on Civil Rights.

Upon the disposition of that waiver resolution, if it is a favorable disposition, the Senate will then proceed to the consideration of S. 1231, and I would assume that rollcall votes will occur in connection with either or both of those measures.

This will probably give the Senate a full day on Monday. If it does not, the leadership will attempt to see what can be done to clear other measures for action.

On Tuesday, Mr. President, the Senate will begin action on Calendar Order No. 133, H.R. 5262, an act to provide increased participation by the United States in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Asian Development Bank, and the Asian Development Fund, and for other purposes.

That will be a bill which will be, I am sure, subject to some amendments and votes. It will be the intention of the leadership to come in early on Tuesday and each day thereafter next week, and to stay in daily as long as is necessary to transact the business which is before the Senate.

Only 3 weeks remain prior to the Independence Day Holiday. It is hoped that the Senate, before it goes out for the holiday, can complete action on the measures I have already mentioned, and that it may also complete action on such other measures as, not necessarily in this order: S. 1520, a bill to amend the Foreign Assistance Act of 1961; S. 1160, a bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act; H.R. 6689, an act to authorize fiscal year 1978 appropriations for the Department of State, USIA, and the Board for International Broadcasting; H.R. 6179, an act to amend the Arms Control and Disarmament Act; S. 717, a bill to promote safety and health in the mining industry; S. 1529, the omnibus rivers and harbors bill; S. 1539, the Intelligence Committee bill; S. 208, the urban mass transit bill, and various and sundry appropriations measures. But, as I say, not necessarily in the order I have mentioned the measures.

Also, I should say that the list of measures I have enumerated is not to be considered all exclusive. This is a pretty healthy schedule for the Senate to chew on during the next 3 weeks. I speak hopefully that it can complete its action on these and other measures which are cleared for action as we proceed.

I also wish to state at this point that I consider it entirely a possibility that the Senate will be in next Saturday, and a probability that the Senate will be in the following Saturday, June 18 and 25 respectively.

(At this point Mr. METZENBAUM assumed the Chair.)

RECESS UNTIL 12:30 P.M., MONDAY, JUNE 13, 1977

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 12:30 p.m. on Monday next.

The motion was agreed to; and at 5:55 p.m. the Senate recessed until Monday, June 13, 1977, at 12:30 p.m.

NOMINATIONS

Executive nominations received by the Senate June 10, 1977:

DEPARTMENT OF STATE

Herman J. Cohen, of New York, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Senegal.

Herman J. Cohen, of New York, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of the Gambia.

Donald Gordon MacDonald, of Florida, to be an Assistant Administrator of the Agency for International Development, vice Charles A. Mann, resigned.

DEPARTMENT OF JUSTICE

Lee A. Limbs, Jr., of Arizona, to be U.S. marshal for the district of Arizona for the term of 4 years vice J. Pat Madrid, resigned.

Harold D. Hardin, of Tennessee, to be U.S. attorney for the middle district of Tennessee for the term of 4 years vice Charles H. Anderson, resigning.

IN THE U.S. NAVY

Rear Adm. Wesley L. McDonald, U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 10, 1977:

CIVIL AERONAUTICS BOARD

Alfred Edward Kahn, of New York, to be a member of the Civil Aeronautics Board for the term of six years expiring December 31, 1982.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

IN THE PUBLIC HEALTH SERVICE

Public Health Service nominations beginning David L. Aronson, to be medical director, and ending Johnny R. Rainey, to be senior assistant health services officer, which nominations were received by the Senate and appeared in the Congressional Record on January 6, 1977.

Public Health Service nominations beginning Edward F. Blasser, to be senior surgeon, and ending Joseph R. Williams, to be assistant health services officer, which nominations were received by the Senate and appeared in the Congressional Record on January 6, 1977.

Public Health Service nominations beginning Maurice B. Burg, to be medical director, and ending Jon P. Yeagley, to be senior assistant health services officer, which nominations were received by the Senate and appeared in the Congressional Record on April 7, 1977.